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A HISTORY OF SUFFRAGE IN THE UNITED STATES

A DISSERTATION

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BY

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TO

PAUL M. GODEHN

WHOSE CONSTANT INTEREST, HELPFUL ADVICE,
AND SUGGESTIVE COMMENT HAVE BEEN A
SOURCE OF INSPIRATION AND STIMULUS

PREFACE

It seems to have been taken for granted in this country that well-nigh universal manhood suffrage has existed since the Revolution. Curiously enough historians have paid almost no attention to the struggle for broader suffrage carried on during the first fifty years of our national existence and thus have lent color to the assumption that there has never been a struggle worth mentioning.

It is the purpose of this book to bring out the fact that a vigorous fight has been going on ever since 1776 to secure suffrage for some large and discontented group—ever growing larger and more discontented until it finally embraced the women. And in the wake of this demand the suffrage franchise has expanded slowly, grudgingly, and by compromising steps. The progress still continues in the same laborious fashion.

Many are surprised to learn that the franchise was so limited when the Constitution was adopted, and the histories give but scant hint of the fact that in the early decades of the last century the greatest statesmen in such states as Massachusetts, New York, and Virginia were throwing the whole weight of their wisdom, logic, and oratory into the balance in order to stem the tide and restrict the suffrage to the small group of property owners and taxpayers. A history of these events is here set forth. An attempt is made to present a panoramic picture of the whole United States and to carry

the reader rapidly on from decade to decade without getting lost in the details of local history. No exhaustive study of suffrage laws at any given time or place has been made, for that would not have served the purpose in view. Rather the political ideals, arguments and theories, social conditions, and economic circumstances that caused men to want the suffrage and think they had a right to it have been sought out, and thus the development of the move toward universal suffrage has been traced in its broader aspects. Obviously for this purpose the debates in state constitutional conventions have been much more valuable than statutes and constitutions. It is therefore these debates that are the foundation of this book.

It may be that undue emphasis has been placed on the Civil War and the reconstruction period; but the intention was to pick out of Civil War history the events and circumstances that had to do directly with the suffrage and to lay them before the reader who is not necessarily familiar with that history. Negro suffrage is an unsolved problem. It is vitally connected with Congressional representation, and as regards this very serious complications may arise. So after all it is well for one to have a pretty thorough knowledge of negro suffrage—how the negro got it, what he did with it, how he lost it, and what the result may lead to.

As to the latest and most interesting phase, that of woman suffrage, the treatment may not be considered entirely satisfactory or fair by those who favor the cause. But the past history of woman suffrage has been treated very thoroughly by other writers, and recent history is being set forth by every woman's club and uplift society

in the length and breadth of the land. So far as woman suffrage is concerned this volume is intended to give the reader a background from which he can approach the issue with a knowledge that he might not be able to get elsewhere. The book should help him to approach the question of woman suffrage himself, in the light of other suffrage history—indeed, the history of "man suffrage."

K. H. P.

Chicago, Ill.
September, 1918.

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CHAPTER I

THE TRANSITION PERIOD

The Colonial period in the history of suffrage in this country has already been thoroughly covered and there is no occasion for rehearsing the data.[1] However, the theory and practice of the English colonists in the matter of fixing the elective franchise must be reviewed in its broad aspects and general tendencies in order to secure an adequate foundation on which to base a history of suffrage since the Revolution.

In spite of the tremendous significance of the Revolution and its effect upon the political life of the colonists it seems not to have affected the normal development of suffrage to any considerable extent. The statesmen of those times were not carried away by the success of the Revolution. The victory was merely a vindication of their theories and left them free to develop their ideas. But since the home government had never attempted to interfere to any appreciable extent in the matter of suffrage the franchise in the thirteen colonies was already fixed in accord with the theory of that day. The Revolution brought no change in the theory and hence there was no occasion for sweeping changes in political institutions which for decades past had been quite at the disposal of the colonists themselves. Indeed, so very sober and conservative were many of

[1] C. F. Bishop, *History of Elections in the American Colonies;* A. V. McKinley, *Suffrage Franchise in the Colonies.*

the leaders that a reactionary movement can be noted in various governmental institutions. However, suffrage did not suffer any such reaction but continued in its normal expansion. On first sight it might appear that the more liberal suffrage provisions to be found in the constitutions immediately following the Revolution indicate an abrupt and marked advance in the development of suffrage due to the Revolution itself. But this interpretation is hardly tenable. Ideas concerning suffrage had reached a certain point at the time of the Revolution, and that event simply provided a suitable occasion to express these ideas in the organic law. It is reasonable to suppose that the same marks of development would have come anyway, at least within that generation, instead of being bunched, as it were, in meeting the exigency of the war. So it must be understood that 1776 is an appropriate date from which to trace the development of suffrage, not because that date is a landmark of especial importance, but rather simply because 1776 marks the beginning of the United States as an independent country with a history of its own.

It is then quite proper to review with great briefness the Colonial period and see if it is possible to pick up the threads of suffrage development, trace them through the Revolutionary period, and see what new lines they may lead into.

In the very earliest times the right to vote in a province or colony was claimed in very much the same way that one would claim a right to vote as a stockholder in a corporation.[1] The early colonies were of the nature of business corporations, and the analogy in voting right

[1] C. F. Bishop, *op. cit.*, p. 47.

is not surprising. Hence the landed-property qualification was the one outstanding and universal requirement throughout the colonies, for real property was considered to be a block of stock, as it were, in the corporation and entitled the holder to a vote. Of course this concept was not so consistently carried out as to grant suffrage to minors, women, and others who were not considered fit to exercise the franchise. But the underlying idea was that a man's property entitled him to vote—not his character, his nationality, beliefs, or residence, but his property. Massachusetts in 1621 provides a good illustration of the business-corporation concept.[1] There was no thought of granting suffrage to mere residents; no man could vote until he had the "freedom of the Company," which involved the ownership of real estate.

But this very simple test of property holding could not long hold out alone, although it was the first and the dominating consideration for almost two hundred years following. The population became so complex, the interests of colonists expanded so far beyond mere commercial enterprise, that other standards of fitness for participation in the affairs of the community were sought out and established. Strict limitations had been put upon the right to join the company, and after the companies ceased to exist and the colonies became exclusively political institutions the same limitations were carried over for the suffrage with some elaboration. They dealt with all the various things which are supposed to determine capacity to take intelligent interest in community affairs. Race, color, sex, age, religion,

[1] *Hopkins Studies*, XII, 383.

and residence were now investigated before the applicant was admitted to the suffrage. The theory was that only those who clearly had an interest in the colony—measured in terms of tried standards—should exercise the right of suffrage. In 1716 in South Carolina an act was passed aiming to admit only such persons as had an interest in the colony, and it excluded Jews and free negroes, in addition to imposing a high property qualification and religious tests.[1] This evidence of interest in Colonial affairs was measured in exceedingly narrow terms.

Standards of character and fitness varied from one part of the country to another. In Massachusetts the Puritans believed that only by restricting suffrage to men in their churches could the future well-being of the colony be insured. The problem of the "right" to vote became distinctly subordinate. They restricted the suffrage for the good of the community. The fact that their standard of good character (church membership) was narrow is not at all surprising. The character of the man's employment was often considered a criterion of his ability to vote intelligently, and thus college men and clerical officers were presumed to be especially fit for the suffrage.

The philosophy of suffrage has always been more or less opportunistic, if the word is permissible. Suffrage qualifications are determined for decidedly materialistic considerations, and then a theory is evolved to suit the situation. In the early days riot and disorder might accompany an election. The authorities would thereupon fix the qualifications so that the disorderly people

[1] McKinley, *op. cit.*, p. 146.

could not vote next time. Then would come the theory to justify it—only those owning a certain number of acres would be considered fit to vote, only those of a certain religious faith, and so on. Unquestionably this has happened in times of stress, for theory did not come to be the preliminary determining factor until complete peace and order prevailed, and even then theory was not uncolored by materialistic considerations. Suffrage limitations were bound to adapt themselves to social and economic conditions. In rural Virginia the freehold requirement of fifty acres excluded very few of the best type of men.[1] But such a requirement in an urban community would have been intolerable. Obviously an absolute criterion could not obtain. It became necessary to adopt whatever criterion was calculated to embrace the best men.

Moral qualifications were restricted almost exclusively to New England. It was sometimes necessary for the voter to show proof of his good character. At other times if one were accused of improper conduct it would cost him his vote, although the particular offense was not mentioned in the law. In the South there were restrictions against men of certain race—foreigners and negroes were excluded. There were complaints that "Jews, strangers, sailors, servants, negroes, and Frenchmen" could vote.[2] No definite reason was given why these people should not vote, for no doubt the reason was supposed to be obvious enough.

All of the restrictions and qualifications can be seen to support one of two fundamental principles: one may be called the "theory of right" and the other the "theory

[1] *Ibid.*, p. 44. [2] *Ibid.*, p. 138.

of the good of the state." Every qualification imposed had one of these two principles in view. Either it was established in order to fulfil the right which certain people were supposed to have, or else it was established simply in order to serve the best interests of the state. It might have been said that a man had a right to vote because he owned property, or because he was a resident, or because he paid taxes, or simply because the right to vote was a natural right. And this would be the guiding consideration without regard to the effect it might have on the well-being of the community. Thus in some places Nonconformists were allowed to vote because their property right was recognized. Non-residents were permitted to vote where they owned property solely because they were supposed to have a right to vote on account of their holdings. This theory of right was the first to appear and has always persisted. Each generation would seek to add a new subhead to the title, as it were, and base a "right" to vote on some new ground.

The other great principle or theory had to do with the good of the state. It developed as soon as the narrow business-corporation concept was abandoned, and it was most emphasized by the Puritans. It continues to the present day but has never been entirely divorced from the theory of right. Under this theory of the good of the state men were excluded because they were not church members, because they were criminals, because they had not been residents a long-enough time. It is not always possible to classify every restriction definitely, but it may be said that one of these two theories controls every modification of the suffrage.

It would be well now to scan the situation as it was immediately before the Revolution, see who could vote, and note the influence which these two theories were exerting.

Seven of the thirteen revolting colonies maintained an uncompromising landed-property qualification. No one could vote unless he owned real estate. Thus in Rhode Island it had been determined as late as 1767 that in order to vote one must own real estate which was valued at forty pounds or which yielded an annual rent of forty shillings. Also, Catholics were excluded from the polls. There seem to have been no other requirements—not even the usual residence period. Georgia, on the other hand, required of her voters that they possess fifty acres of land in the district where they cast their votes, and also that they live in the province six months previous to the election. Thus Georgia did not recognize mere ownership of property as the sole evidence of proper interest in the affairs of the community. The voter must be more than a mere stockholder, as it were. He must have his residence in the district where he wished to vote, and he must have lived in the province six months. A short period, to be sure, but it indicates a tendency to hold the good of the state as well as the right of the individual in view—in contrast with Rhode Island, where only the property right of the individual was recognized.

The New Hampshire suffrage law dated back to 1727. Here is found, instead of property in terms of acres, real estate in terms of money value. The voter must possess real estate in the district where he voted to the value of fifty pounds. Thus New Hampshire, like Georgia, laid

some stress on residence. The fifty-pound value rather than fifty acres is significant. In Georgia it was easier to acquire fifty acres of land than it was to acquire land worth fifty pounds. Land was so cheap that it would take a very large amount to be worth that sum, whereas in more thickly populated New England a fifty-acre requirement would have been prohibitive. This problem was to be a vexed one in future years in states where there were both rural and urban communities. North Carolina and New York present a similar contrast. In the former province one had need to possess a freehold of fifty acres and must have lived in the province six months, while in New York one must have held lands or tenements to the value of forty pounds. In New York the letter of the law excluded Jews and Catholics, but there seems to have been no strict enforcement of this provision.[1]

Three states present a slight modification of the uncompromising and rather high real estate qualification. The Virginia law of 1762 required an estate of fifty acres if the land were undeveloped and twenty-five acres if the land was being worked and was occupied by a house twelve feet square, or a town lot with a similar house. Here was Virginia trying to reconcile the demands of urban dwellers, who found it hard to acquire lands of broad extent, and the rural population, which would resent a qualification fixing a value upon the land which must be held. Virginia introduced more restrictions of another sort than any of the other colonies. Free negroes, mulattoes, Indians, women, minors, and Catholics were specifically excluded, and some others were

[1] McKinley, *op. cit.*, p. 212.

automatically excluded by the restriction of voting rights to Protestants. This law had been in force since 1762 and obtained well into the nineteenth century.

New Jersey modified the real estate qualifications even more than Virginia, where the franchise could be exercised by one who possessed a town lot. New Jersey demanded one hundred acres of land or personal property to the value of fifty pounds and some real estate. Some land was required, but it may have been ever so little if the individual possessed enough other property to be worth fifty pounds.

South Carolina further modified the landholding qualification by laying stress on the payment of taxes. One must have possessed one hundred acres of unsettled land on which he paid taxes, or a settled plantation, or he must have owned a town house and lot worth sixty pounds on which he paid taxes, or he must have paid taxes amounting to ten shillings per annum, which would be sufficient in itself. Residence of one year in the province was required, and the franchise was limited to Protestants.

The five remaining colonies allowed the substitution of personal property for real estate. This indicates a distinct concession to the urban communities, and it is significant that four of these states are in the small New England group, where the supply of real estate was limited. This adaptation of the suffrage qualification to the particular economic situation illustrates the willingness of men to adjust their ideas of what is fundamentally right to the needs of the dominant group.

In Massachusetts one must have owned real estate yielding an annual income of forty shillings, or must

have possessed other property worth forty pounds. The Connecticut qualification was identical with that of Massachusetts. In Maryland it was fifty acres of land or personal property to the value of forty pounds. Catholics also were excluded in Maryland. In Delaware one must have possessed fifty acres, with twelve acres cleared and improved, or have been otherwise worth forty pounds. Here also was the highest residence requirement—two years in the province. In Pennsylvania it was fifty acres of land or any kind of property valued at fifty pounds.

Only eight of the thirteen states altered their suffrage laws during the Revolution, and the modifications were not such as to indicate that statesmen had abandoned the principle that only property holders should vote. The only tendency manifest was to reduce the amount. Thus Georgia in 1777 placed the property qualification at ten pounds' value, either real or personal property. Maryland set the requirement at fifty acres of land or thirty pounds in money. New Jersey said nothing about real estate but put the test at fifty pounds' proclamation money. New York required a freehold of twenty pounds, or ownership of a rented tenement yielding forty pounds, and evidence that a state tax had been paid. North Carolina required ownership of fifty acres of land in order to vote for senators, but the right to vote for members of the lower house was enjoyed by all who simply paid public taxes. Pennsylvania abandoned the property test and merely required the payment of public taxes. In 1778 South Carolina exhibited her conservatism by sticking to a high qualification—a freehold of fifty acres or a town lot, or the payment of a tax equal

to a tax on fifty acres. South Carolina also insisted that voters should acknowledge the being of a God and believe in future rewards and punishments. This, it may be said, was the last survival of the old religious qualifications and is conspicuous for standing alone. In 1780 Massachusetts fixed her suffrage requirement at a freehold yielding an income of three pounds, or an estate valued at sixty pounds.

The comparison of Tables I and II on pages 12 and 13 illustrates the fact that the Revolution had a very slight immediate effect on the development of suffrage. In every one of the thirteen states a property qualification still held,[1] and in five of them the property had to be in the form of real estate. The great accomplishment during the last century of the Colonial period had been the breaking down of religious and moral qualifications. These had practically disappeared and need not occupy further attention. The interesting process to be noted at the end of the eighteenth century was the breakdown of the old English principle that suffrage should only go with ownership of real estate, this theory being based on the right of men to vote in virtue of their possessing a material interest in the community. There are normally two steps in the breakdown of the real estate requirement: first, the substitution of personalty for real estate, and second, the substitution of taxpaying for property of any kind. These stages are illustrated in the laws of the thirteen states and in a striking manner indicate that the Revolution occurred right in the very midst of

[1] The payment of taxes only, as in Tennessee, was equivalent to owning property, although of course it may have been an exceedingly small amount.

TABLE I

PROPERTY QUALIFICATIONS JUST BEFORE THE REVOLUTIONARY WAR*

State	Real Estate Required	Alternative
	REAL ESTATE IN TERMS OF ACRES	
Georgia	50 acres	
North Carolina	50 acres	
Virginia	50 acres vacant, or 25 acres cultivated, and a house 12×12, or a town lot and house 12×12	
New Jersey	100 acres, or some real estate and personalty worth 50 pounds	
	REAL ESTATE IN TERMS OF VALUE	
New Hampshire	Worth 50 pounds	
New York	Worth 40 pounds	
Rhode Island	Worth 40 pounds, or yields 40 shillings annual income	
	REAL ESTATE WITH AN ALTERNATIVE	
Pennsylvania	50 acres	Other property worth 50 pounds
Delaware	50 acres (12 cleared)	Other property worth 40 pounds
Maryland	50 acres	Other property worth 40 pounds
Connecticut	Yielding 40 shillings annual income	Other property worth 40 pounds
Massachusetts	Yielding 40 shillings annual income	Other property worth 40 pounds
South Carolina	100 acres on which taxes are paid, or town house or lot worth 60 pounds on which taxes are paid	Payment of 10 shillings in taxes

* McKinley, *op. cit.*

TABLE II

PROPERTY QUALIFICATIONS IMMEDIATELY AFTER THE REVOLUTIONARY WAR*

State	Real Estate Required	Alternative
	REAL ESTATE IN TERMS OF ACRES	
North Carolina	50 acres†	
Virginia	50 acres vacant, or 25 acres cultivated, and a house 12×12, or a town lot and house 12×12	
	REAL ESTATE IN TERMS OF VALUE	
New Hampshire	Worth 50 pounds	
Rhode Island	Worth 40 pounds, or yields 40 shillings annual income	
New York	Worth 20 pounds, or yields 40 shillings annual income (must have paid a state tax)	
	REAL ESTATE WITH AN ALTERNATIVE	
Delaware	50 acres (12 cleared)	Other property worth 40 pounds
Connecticut	Yields 40 shillings annual income	Other property worth 40 pounds
Massachusetts	Yields 3 pounds annual income	Other property worth 60 pounds
South Carolina	50 acres, or a town lot	Payment of a tax equal to a tax on 50 acres
Maryland	50 acres	30 pounds in money
	NO REAL ESTATE REQUIRED	
New Jersey	50 pounds proclamation money	
Georgia	Property of ten pounds' value	
Pennsylvania	Must have paid public taxes	

*F. N. Thorp, *American Charters, Constitutions, and Organic Laws.* Observe that five states, Georgia, Maryland, New Jersey, New York, and Pennsylvania, lowered the qualifications from those existing before the war.

† This qualification applied only in the election of state senators. Payment of public taxes was the qualification for voting for members of the lower house.

this interesting gradual transition from property in real estate to simple taxpaying. The exclusive-property test then was doomed when the United States came into being, although it still clung to more than half the states. It was losing its grip, but it required more than half a century to shake it off entirely. New states as they entered the Union seemed to fit into the general scheme of things without disturbing the normal, gradual expansion of the suffrage. The constitutions of incoming states squared up with new constitutions of the old states and merely added size to the picture, as it were, without changing its fundamental aspect. This gradual expanding process must be traced. As old threads become thin and finally break and property tests are lost to view, new threads are taken up in the form of problems presented by the foreigner, the free negro, and woman.

Other minor problems had to be dealt with too as the property test disappeared. Residence was an inconsiderable item in the Colonial period, as was also citizenship. These problems were dealt with in the coming years, and the suffrage laws began to assume the function of penalizing men for crime and keeping the polls free of corruption. These new functions necessitated modifications of the theory of suffrage; presently it was found that the theory of right and the theory of social good came into conflict, and yet the interpretation of each in the light of advancing civilization involved an expansion of the suffrage.

Of course the basis on which a study of the suffrage must be founded would be the constitutional provisions in the various states. Altogether there have been about

one hundred and twenty constitutions drawn up and put in operation since the Declaration of Independence, and the suffrage provisions in these constitutions must be the structural work on which a history of suffrage may be built. They indicate the actual turning-points and show in unembellished outline form the trend of thought on the matter of suffrage. But the question at once occurs: Is it necessary to take account of the acts of state legislatures and add statutes to the outline structure? However, a study of the constitutional law on the subject and a survey of statutory acts concerning suffrage lead to the conclusion that the legislative acts are of scarcely any importance and do not need to be added to the constitutional provisions in order to form an adequate basis for a history of suffrage. Writers on constitutional law and the law of elections dispel all scruples on this matter.[1] But it occasionally happens that the constitution permits the legislature to use discretion in the matter of enlarging the suffrage. Thus in recent years legislatures have been permitted to levy poll taxes as a prerequisite to voting and to impose literacy tests. But authority for these must always be positively found in the constitution

[1] M. H. Throop (*Law of Public Officers*, p. 129) says, "The power of the state to regulate the elective franchise is exercised universally by means of provisions in the constitutions of each state." He goes on to point out that there is a very small field left for statute law. Acts are sure to be declared void if they prescribe further qualifications than the constitution contains, or if they grant suffrage to any person who does not possess the qualifications stipulated for. However, requirements not in conflict with the spirit of the constitution may be superadded, such as terms of residence in election districts, exclusion of certain public officers from the suffrage, etc. But anything the legislature may do is likely to be of small importance.

itself.[1] The tendency always is to restrict the power of the legislature to tamper with the suffrage requirements, and the courts incline to construe the suffrage clause very narrowly.[2] It is even doubtful if the legislature can grant permission to local government units to restrict the suffrage farther than is done in the constitution.[3] The subject is dealt with by Judge Cooley in the following words:[4]

> The doctrine that the legislature cannot add to the constitutional qualifications of voters is founded upon the well-settled rule of construction that when the constitution specifies the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference to add to the condition, or to extend the penalty to other cases.[5]

The chief business of the legislature in connection with suffrage, and a very important function it is too, is to regulate and safeguard the exercise of the franchise in order that the fundamental provisions with regard to suffrage as found in the constitution will be properly

[1] F. R. Mechem (*Law of Public Officers*, p. 80) calls attention to the fact that many times legislatures have attempted to overstep the bounds set out for them by the constitution, and that the acts they have passed have been declared unconstitutional. He cites many cases concerning the imposition of oaths, registration acts, etc., which in effect added to the constitutional requirement for suffrage.

[2] *State* v. *Williams*, 5 Wisconsin 308; *State* v. *Lean*, 9 Idaho 279.

[3] G. W. McCrary (*American Law of Elections*, p. 38) points out that there is no unanimity as regards the franchise that may be granted in local governments on offices not organized by the constitution. But he declares that the weight of opinion is overwhelmingly against permitting alteration of the suffrage qualifications under any circumstances.

[4] *Constitutional Limitations*, p. 64.

[5] See *Rison* v. *Farr*, 24 Arkansas 161; *Allison* v. *Blake*, 37 New Jersey 6.

observed. This may involve a great many minute regulations but no essential alteration of the right of suffrage.[1] Thus a registration law passed by a state is perfectly good so long as it does not actually impair the right of the individual to vote. It merely systematizes the exercise of the franchise.[2] And as to oaths, one may only be required to answer concerning his qualifications as set forth in the constitution.

In contrast to all this it should be pointed out that occasionally state legislatures have been permitted to set a different suffrage qualification for non-constitutional offices. This happened in Illinois within the past decade, and women were given the right to vote for non-constitutional offices, including of course presidential elections. No evidence of woman suffrage can be found in the constitution, and yet woman suffrage in Illinois is a very significant fact. However, this situation is conspicuous for being very rare. It can be interpreted only as a reflection on the rigid amending machinery of the state constitution and indicates a sure movement toward an amendment to remedy the anomalous situation as soon as the inertia can be overcome and the amending machinery set in motion.

The constitutions of incoming states and the new constitutions of old states appear with sufficient regularity and absence of broad intervening periods of time, so that a good knowledge of the causes and circumstances of their being provides an excellent index of popular

[1] McCrary, *op. cit.*, chap. xxi.

[2] Throop (p. 135) calls attention to an Oregon case, *White* v. *County Commissioners*, 13 Oregon 317, in which even this doctrine was narrowed down and a registration law set aside.

opinion and the trend of public thought. Convention debates, where they have been fully reported, are the most valuable sources of information, as the conventions were clearing-houses for popular opinion and a place for long-pent-up convictions to burst in a blaze of oratory and echo the opinions of tradesmen in the cities and farmers in the country, as well as of scholars and professional men. These debates bring out the reasons men had for wanting a broader extension of the suffrage. Were they materialistic? The practical lawyer was there to exploit them. Were they based on philosophic reflection? The dreamer was there to wax eloquent about it. Special interests had their spokesmen present. The gathering sentiment from year to year, modified and influenced in the one state by the actions in the others, would finally gain complete expression on the convention floor and be recorded in a new constitution which in turn would influence and modify the tendencies in the neighbor states. This interaction cannot be too much emphasized; one state abandons the property test because her sister-states have done so and are attracting the labor element there. A state in the Middle West agrees to let the foreigner vote in order to attract immigrants from other states to her own unplowed fields. The people of a border state between the South and the North vigorously oppose the negro suffrage because southern state law drives the free negro out of his native haunts. And so it goes. A continuous interplay of forces manifest themselves each succeeding year in new constitutions springing up here and there all over the continent, and they form an endless concatenation which, if it could be pictured graphically, would, in the

phrases of the statistician, form a smoothly sweeping curve toward broader suffrage.

False theories, specious arguments, ignorance, and prejudice all played their part, as well as conscious ulterior motive, progressive statesmanship, and benevolent democracy. Convention debates may be woefully puerile, verbose, bombastic, or naïve. Yet if the orator by passionately invoking the natural-right doctrine can move a convention to extend the suffrage in a backward state, the fact of natural-right philosophy exerting an influence in that state is highly significant and must be given credit for the extension brought about. The great, long, tiresome pseudoscientific arguments about the biological inferiority of the negro race and disputations on what the apostle Paul thought about women make the modern statesmen quite impatient. Yet these very arguments have their place in the composition of forces making ultimately for broader suffrage. It is the function of this work to trace the inception and the influence of these forces.

The fundamental, significant starting-point, that is, a statement of the property test immediately after the Revolution, has been compactly presented, and also a skimming outline of the appropriate materials to use for building on to it. Now it is necessary to amplify the statement of suffrage qualifications after the Revolution and then plunge into the process of development.

CHAPTER II

THE WEAKENING OF PROPERTY TESTS AND THE BEGINNINGS OF THE FOREIGNER PROBLEM

There is very little to be found in the suffrage requirements established during the Revolutionary period that is of any significance outside of the property and the taxpaying requirements. A property or taxpaying test is so strict in itself that the need for other limitations is not present. When a man owned property or paid state taxes it was frequently considered quite unnecessary even to limit the term of residence. There was practically no race problem to deal with, for the northern states did not concern themselves greatly about the few free negroes who might dwell in the state, and in the South it was not necessary specifically to exclude negroes. The negro problem, as will be seen later, always assumed most disagreeable proportions in the border states. The foreigner was not yet a problem, although he was soon destined to become one. Any man who identified himself with the newly created government was not called upon to give technical evidence of citizenship.

Where sex was not mentioned, and it seldom was except incidentally, the presumption of course was that only men could vote. The word "freeman" is frequently used and gives weight to this presumption, if indeed any weight is needed. Such undesirable persons as paupers, idiots, the insane, etc., were practically excluded by the

property test, and the need for specifically disqualifying them did not appear until the property test was gone. Exclusion for crime was not a general practice until somewhat later and possibly for the same reason. Relatively few criminals would be found among the property owners and taxpayers. The age of twenty-one was universally prescribed.

So it happens that the revolutionary constitutions are relatively free of any qualifying phrases except those concerning property. Georgia and Maryland, however, restricted the suffrage to white males, and the former state required six months' residence in the county, while Maryland demanded one year. South Carolina used the same terms and in addition perpetuated the old Colonial restriction, "Acknowledge the being of a God and belief in a future state of rewards and punishments." That this should have found a place in the constitution of 1778 is rather unusual, but may have been an oversight. No evidence seems to be available that it ever was enforced, and in the constitution of ten years later it is gone. North Carolina, New Jersey, and Pennsylvania required a residence in the state of one year; New York, six months in the county.

There is practically nothing else worthy of note in these constitutional provisions, but it will be seen that before the century was ended the constitutions became very much more explicit about age, sex, and residence, but did not branch out much farther, even to the question of citizenship. While the property qualification rapidly disappeared, the new problems that necessarily followed in its wake did not show themselves at once, and there is a period during which the polls were not carefully

guarded against undesirables. The need was not at once appreciated.

Scarcely a year after the Revolution was over a constitutional convention was called in New Hampshire to draft a new organic law for that state. The conservative restriction of the Colonial period was abandoned and in its stead a simple taxpaying qualification was provided. Two years' residence in the town was required, but outside of that limitation every male twenty-one years of age who had paid a poll tax enjoyed the elective franchise. Georgia did practically the same thing five years later, in 1789. A constitutional convention drew up a constitution which was put into effect and which abandoned even the small ten-pound property qualification which had been maintained up to that time. Those who had paid a tax within a year received the franchise under this constitution.

It is to be observed then that less than ten years after the Revolution two states, one at the North, the other at the South, abandoned their property tests and substituted taxpaying. These facts clearly illustrate the tendency of the time and mark the gradual process of the property-test breakdown: from property in real estate to any sort of property, and then simply to taxpaying. Seldom did the property test give way altogether; almost invariably it passed more or less rapidly through these stages.

Six states revised their constitutions and three new states joined the Union in the remaining decade of the century. The constitutions of the three new states are particularly significant. In 1791 Vermont came in with her old constitution of 1777, which was the most liberal

of all in the country. Vermont was the only state where full manhood suffrage prevailed. The only requirement was one year's residence in the state and "quiet and peaceable behavior." This quaint phrase remained for many years in the organic law of Vermont, and, while of course it is quite meaningless from a practical point of view, sentimental considerations prevented its being eradicated. No property or tax-paying test ever prevailed in Vermont, and it is not unlikely that this liberality had some influence on the neighboring state of New Hampshire, which soon abandoned her taxpaying test. Vermont provided herself with a new constitution two years later, but the suffrage qualification was not changed, and any man who was of quiet and peaceable behavior could still vote if he satisfied the residence requirement.

Still the balance, North and South, obtained, and Kentucky joined the Union in 1792 with a constitution just as liberal. It illustrates the fact that forces making for more liberal suffrage were not localized. The spirit of democracy was in the blood of all the people both North and South, and when there were no strictly materialistic considerations at stake, as in the struggles over commercial policy, the reaction of the democratic mind was likely to be the same all over the country. The problem of suffrage was not yet tied up with the immigration problem, the free negro, and woman's rights. To many men it was simply just and not at all alarming to admit their native white neighbors to the polls whether they had property or not. Of course in many of the states vested interests succeeded in retaining the old property tests in one form or another, but the

element of race and national prejudice found nothing to cleave to at this time, and hence the same tendency of gradually wearing down the property test is to be found both North and South. Kentucky admitted to the polls all free males who had lived in the state two years and in the county one year. This was a rather high residence requirement.

The remaining state to join the Union before the eighteenth century had passed was Tennessee in 1796. Here are exhibited the relics of conservatism right next door to Kentucky. Quite likely the sentiment in the two states was very similar indeed, and the fact that Tennessee inserted a freehold property requirement shows that the country was really passing through a transition period. The extent of liberality in Kentucky was just enough greater to result in an abandonment of property tests, while in the neighbor state the same liberal spirit could not quite gain full expression. These states were still on the halfway stage, and very slight influence could have swayed the balance either way, whereas a few years later a property test could not have stood a chance. Tennessee required all voters to possess a freehold, without stipulating size or value, and to live six months in the county. It was the real estate test of course, but it could not have been a slighter test surely.

In South Carolina the forces of conservatism also held control. A new constitution was adopted in this state in 1790 and retained the property test with a tax-paying alternative. Fifty acres, or a town lot, or payment of three shillings in taxes was required. So it will be seen that the property test was at a very low ebb.

Pennsylvania in the same year retained the old provision in a new constitution, mere payment of a state or a county tax. Both states had a two-year residence requirement.

New Hampshire in 1792 abandoned even her taxpaying requirement and got into a class with her neighbor Vermont. Here the steps in the breakdown of property tests are most strikingly illustrated. Just before the Revolution New Hampshire had a high property test. Shortly after the Revolution this was abandoned and a taxpaying qualification was substituted. Then in 1792 all property restrictions were swept away.

Delaware in 1792 took the first step in this process, and in the constitution of that year is to be found the mere payment of a state or county tax as a requirement. So in the North is found a situation identical with the South—neighbor states, one with the property test, one without, and another halfway between. The gradual transition was taking place everywhere. Georgia in 1798 introduced a new sort of compromise with the old régime and required that all voters must have paid all taxes assessed against them. Obviously this was not a property or taxpaying test, but it was just a trifling concession to the old conviction that suffrage ought to be tied up in some way with property and taxes. It is the first evidence to be found of a practice later very general of exploiting the suffrage laws to coerce recalcitrant citizens to meet civic obligations. Whether this was done consciously or not is hard to say. Probably the phrase was inserted merely as a last tribute to the old scheme of things, and the idea of using it as a club in the hands of the tax collector did not develop until later.

Kentucky made the last contribution of the century to the suffrage history and in the constitution of 1799 gave indication of the looming race problem by specifically excluding negroes, mulattoes, and Indians from the polls. Property and taxes had ceased to be a problem in Kentucky, and now this state entered upon the century-long struggle with the black man, who sought political power. Kentucky is one of those border states where the forces North and South have always met. Farther south the negro was effectively subjugated; farther north he was not a problem. On the border line he was an everlasting torment.

These fifteen years during which the events recited above took place were characterized by the development of a democratic philosophy distinctively American. As the people were now actually independent of external control, the management of the political institutions of the country came to be of greater interest to them, for the personal contact and sense of individual responsibility were more acute even than had been the case in the past, and that is saying a great deal. This stimulated interest in public affairs quite naturally soon came to focus on the suffrage issue, and as the property test began to fail here and there in continuing response to the inevitable tendency begun many decades before, the conservative elements came to look with jealousy upon their privileges and to gird themselves for the struggle that must come. On the other hand, the ultra-Democrats, led by such men as Jefferson, invoked the philosophy of the Revolution in order to justify greater strides toward popular control of government. This story has been told by every historian of the period and

it is not necessary to retell it here. It is enough to say that men soon took sides, identifying themselves either with the conservative element or else with the radical Republicans. Both groups had need to turn their attention to the suffrage question, for in the exercise of the elective franchise men believed that they were getting a full measure of democracy. The struggle for broader suffrage necessitated a battle in each and every state, and for this reason historians have been inclined to pass it over lightly, for the progress in each state was somewhat different.

Theories about suffrage took form and found concrete expression later on. The proposition that men should vote because of right, in virtue of natural law, or in virtue of economic and social status in the community, and the more impersonal doctrine of the good of the state came in for closer scrutiny and were the subjects of conscious deliberation, whereas in Colonial days they were in the vague background. The lines of battle were mapped out and doctrines formulated by both the conservative and the radical elements that were to serve as bases for the next half-century of dispute. For although there is little evidence of conflict on the suffrage issue until well into the nineteenth century, the doctrines which justified the expansion of the franchise were clearly enunciated many years earlier. Massachusetts, Pennsylvania, New York, and Virginia were the great chief centers of controversy. It was in these large, populous, and wealthy states where conservatism held on longest and the struggle was most bitter, and where the best statesmanship and political talent this country ever boasted of was engaged.

Ideal starting-points could readily be found in the abstractions of the Declaration of Independence. Here is a resolution passed in the Massachusetts constitutional convention of 1779:[1] "*Resolved*, That it is the essence of a free republic that the people be governed by fixed laws of their own making." This particular convention was perfectly honest in this declaration and still considered it thoroughly consistent to restrict "the people," who should govern the state, to property owners. Such resolutions as this were later turned against the very men who made them. Abstract propositions of right continually proved to be boomerangs and struck with telling force. "All elections ought to be free, and all the male inhabitants of this commonwealth, having sufficient qualifications, have an equal right to elect officers."[2] The little phrase about having sufficient qualifications was weak indeed against the contention that all the male inhabitants had an equal right to elect officers.

In the Pennsylvania convention of 1789 all joined heartily in the following statement and had it printed in large bold type:

> All power being originally vested in, is derived from, the people, and all free governments originate from their will, are founded on their authority, and instituted for their peace, safety, and happiness; and for the advancement thereof; they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may think proper.[3]

In spite of this acceptance of an abstract principle a vigorous effort was early made in the convention to

[1] Mass. Conv., 1778–79, *Journal*, p. 24.

[2] *Ibid.*, p. 194.

[3] Pa. Conv., 1789, *Minutes*, p. 45.

establish a property qualification for suffrage.[1] Almost feverish eagerness was manifest to get such a restriction in, and it was proposed almost before the business of the convention was well under way. Eventually there was apprehension that it would not carry, and it did not; in its stead the usual compromise of a taxpaying qualification was introduced. Both these large states and their smaller neighbors were extravagant in formal announcements of the rights of "the people." But Massachusetts considered "the people" to be the property owners. Pennsylvania was one step in advance of Massachusetts and considered "the people" to be the taxpayers. Abstract pronouncement sounded well until specific definition of the terms was sought, and when the Radicals said that "the people" included all men twenty-one years of age the fight was on in earnest.

Two very interesting questions arose in connection with the proposition that men had a right to vote. The first had to do with representation, the other with the relation of the non-taxpayer to the state. As to representation, the old revolutionary cry of no taxation without representation was carried over to apply to individuals and was invoked against the property interests. How effective it was can be seen by the quick breakdown of the landholding qualification. The man who held large amounts of personal property on which he paid taxes inveighed against the prostitution of the revolutionary philosophy which left him without a ballot. His protestations were so well taken and so effectively pressed that real estate tests without personalty or taxpaying alternatives were very short-lived. Another

[1] *Ibid.*, p. 37.

matter in connection with representation was not so easily disposed of: government should be by the consent of the governed. Certainly the "governed" were more than the property owners, more than the taxpayers, even more than the men over twenty-one years of age. Here then was one of the favorite slogans, which has persisted to this day and yet can never be fully realized. The taxpayer fought his battle against the real estate owners and won easily, then he had to defend himself against the consent-of-the-governed doctrine. In spite of its vagueness it proved to be the strongest argument the Radicals had ever used to break the grip of the taxpayers.

The other important question mentioned above was concerned with the position of the non-taxpayer in his economic relation to the government. Governed he surely was, and perhaps he was entitled to vote simply by virtue of that fact. But the practical mind at once inquired to see if the non-taxpayer contributed anything to the well-being of the state and was entitled to a voice in management. It is a curious thing that the non-taxpayer won the ballot without ever justifying himself on economic grounds in the minds of a vast majority of men. That is, men believed in those days, and a vast majority believe today, that only the taxpayer contributes to the support of the government. And the curious thing is that the non-taxpayer has won his way without invoking his very best argument, and in fact not realizing that he had it. The point was very rarely made that the man who owns property and pays taxes on it merely happens to be the channel through which the portion of the social wealth necessary to support the

government reaches the government treasury. The taxpayer is not to be praised nor given special recognition and privilege because of this. Those who augment the social wealth, whether they pay taxes or not, are the ones who ultimately support the government. Because property has been the most convenient medium through which to tax the people much misapprehension has grown up around it. The non-taxpaying producer, it is true, has deceived himself in the matter and has often looked with equanimity upon extravagant government expenditures, thinking that he contributed nothing to pay the debt. And this has given rise to the more or less well-grounded opinion that the non-taxpaying element is likely to be careless of government expenses. And yet there always seems to have been an undefined, not clearly recognized feeling that in some way even the most insignificant individual has an economic stake in the community. Defenders of property rights have always been able to hold the floor in debate and overwhelm their opponents with arguments that have not been refuted even when they could have been.

But the inevitable working out of economic law was bound to affect the situation in spite of ignorance and prejudice. The non-taxpayer would not attempt to prove in a forensic way that he actually did contribute to the support of the government simply because he was a producer and augmented the social wealth from which all taxes must be drawn. Furthermore, he did not have the clarity of vision to realize that property owners were mere instruments through which the government tapped the social wealth without any particular sacrifice to the owners. But he knew that he ought to take an

interest in the economic welfare of the state and more or less blindly demanded the ballot, trusting for support in the already outworn natural-right philosophy and government by the consent-of-the-governed doctrine.

It is interesting to note that only in the present generation is the truth about the relation of taxpayers and non-taxpayers to the expense of government beginning to break in upon the public mind. A peculiar sanctity has always embraced the property owner because he paid taxes. He has been inclined to think that the government belongs to him because he supports it personally, and he believes that he confers great benefits upon the rest of mankind by supporting an institution which functions for them as well as for him. As intimated before, men have almost unconsciously repudiated the doctrine without knowing how to combat it in a rational way. If property owners did not find it profitable to be property owners, in spite of the supposed special burden of taxation, they would cease to be property owners. There could be no better proof of the fact that they are not the benefactors they pose as being. If it were possible to administer the property tax fairly the property owner would not feel the burden of taxation any more than the non-taxpaying laborer who rented part of the property. Under normal conditions the tax would be shifted and spread out over all people maintaining economic intercourse in the community. The only reason why the property owner is overburdened with taxes is because the general-property tax is not equitably administered. Overwhelming authority today declares that the general-property tax never can be equitably administered, and the income

tax is being exploited to take its place. Thereby the obstacles to the normal working out of economic law when property was the immediate object of taxation are circumvented and the real situation begins to be manifest. The wage-earner, the real producer, is called upon to pay his share directly toward the support of government; and, contrary to the situation in former years, he now knows that he is doing it. Students of economy know that he has always been doing it; yet not a glimmer of the truth seems to have permeated the darkness of earlier years, and it is not to be wondered at when such profound economists as John Stuart Mill and such shrewd political scientists as Benjamin Franklin labored under the delusion.[1] But the subconscious realization of actually having an economic interest in the state necessarily had its effect, and the defenders of property were told that in spite of their learned, unrefuted arguments they must be wrong.

The conflict over the position which property owners and the landless were to hold in the new government was almost a party issue. The Federal party members, who had carried the constitution through a stormy sea of criticism, felt that they were vindicated by popular support and aimed to make more secure than ever the interests of the landed class. The old Revolutionary theories which had justified the Rebellion were necessarily modified by the fact of the Rebellion being actually accomplished. There was no longer any occasion to foster the rebellious spirit. On the other hand, the pressing need of erecting an effective government was painfully evident. Thus it was that the leaders abandoned

[1] *Works*, IV, 221.

their revolutionary theories and turned to more conservative philosophy. It should not be inferred that these men who had so valorously conducted the late war actually now repudiated the doctrine they had previously invoked. They merely said nothing more about it and devoted their attention to establishing an effective government. In spite of the old theories of natural right and consent of the governed they were not in the least reluctant to base political privilege upon financial status and were quite determined to concentrate political power in the hands of the property interests. This of course meant a very narrow group.

Although the Federalists were defeated and discredited more or less by the next generation of Jeffersonian Democrats, there is good reason to respect and admire them for saving the nation from almost certain dissolution. The troubles following the Revolution were calculated to drive thoughtful men into conservatism. The Articles of Confederation were such a hopeless failure! The contempt for law and order and the general civic unresponsibility were so widespread that the Federalists were determined to stand by their guns and protect the newborn nation from a wreck on the chaotic sea of democracy. These Federalists were leaders in their respective states, particularly the three great states of New York, Massachusetts, and Virginia, and there they succeeded in keeping the reins of government in the hands of the few.[1] Where the old argument that property owners had a special exclusive right to suffrage was not availing they unhesitatingly declared

[1] J. S. Bassett, *The Federalist System;* C. E. Merriam, *American Political Theories;* John Adams, *Works; Federalist.*

that the good of the state was involved. The leading statesmen of the day repeatedly declared in writings and from the platform that the salvation of the country depended upon keeping the untrustworthy, ignorant populace from the ballot box and leaving the government in the hands of the able and the well-born, not alone because of their right, but for the good of the state.

The first years of the nineteenth century were dominated by the Jeffersonian party of Antifederalists. Jefferson had always been a leader in demanding for the people full participation in the government. His program involved a very broad suffrage, and while it was not achieved in his day the influence of these years was very marked.

Jefferson in contrast to the Federalists had unbounded confidence in the people. He had great faith in popular institutions. He believed that natural instincts would lead men right if they were left unhampered, and he wanted no governmental clogs put upon the means of popular expression. He saw great potentialities in the people. He wanted the individual to have the widest possible opportunity for development and self-expression. This party, called the Democratic-Republican, was the first to be effectively organized, and the purpose of the organization as handled by Jefferson was to reach out and down to the most insignificant groups and provide for them a medium to express their will through a machine that could embrace them all.[1] Possibilities for expression stimulated interest in local organization of the party machine, and real popular

[1] A. C. McLaughlin, *The Courts, the Constitution, and Parties;* Edward Channing, *Jeffersonian System;* Thomas Jefferson, *Works.*

government came into being. Of course all this involved a broader suffrage, and while it did not come at once the demand became increasingly stronger. Jefferson and his party fostered local government institutions, small government units such as the township, which would be close to the people and stir up their latent interest in government affairs. Previous to this time government institutions had been somewhat far removed from the ken of the average man, except perhaps in the New England towns. The pioneer in the growing states was not in touch with government institutions, and the Jeffersonian party saved him from complete alienation by providing local organizations, governmental and extra-governmental, to occupy his attention and tie him to the central government. In view of this a wider suffrage was inevitable, and while the fruits of this doctrine did not appear until some years later the impetus provided at this time must not be neglected.

In the twenty years from 1796, when Tennessee joined the Union, until 1816 only two more states were admitted. They were Ohio in 1803 and Louisiana in 1812. The Ohio constitution was very liberal and exhibited several new features that are worthy of note. The property qualification was here simmered down to its lowest terms, for there is only a mere trace of it. In order to vote, one must have paid a county tax or else have worked out a tax on the public highway. Some historians have hailed this low requirement as a very significant step in the dying out of property qualifications,[1] but after all it is a rather striking evidence of the hold which the conservative element still

[1] J. B. McMaster, *History of the People of the United States*, III, 146.

had that even this sort of qualification could obtain in this new western state where radical philosophy found most favorable conditions to flourish. Jeffersonian democracy fastened its very roots in such states as Ohio, populated by a vigorous, adventurous, and sturdy proletariat just awakening to the possibilities of political power. Ohio in 1803 was far along the road to manhood suffrage but still clung to a last remnant of the transition characteristics—a compromise of some sort—a last weak, expiring tribute to the property interests. Vermont had come in without any limitations, but Vermont can hardly be said to have been such a significant state as Ohio. Ohio was characteristic of the new West. Property never had a firm hold here, and the struggle of property interests against the new democracy was never staged in the new states. That struggle was carried on only in the original thirteen states, and the most significant stages in the defeat of property interests must be found there. A losing cause could hardly be expected to make a play for new conquests. Yet of course Ohio indicated that with the coming years all the new territory would be organized and formed into states likely to be not less liberal than was Ohio, and this meant ultimate defeat for the old eastern conservatism, for that philosophy had no room for expansion.

The Ohio constitution limited the suffrage to white males, said nothing about citizenship, and required one year's residence in the state. Here also is found a suffrage law explicitly guarding the polls against an unsafe element looked upon as having no political rights the state was bound to respect. Idiots and insane were specifically excluded, also those convicted of bribery,

perjury, or any infamous crimes. Soldiers, sailors, and marines were disfranchised by not being permitted to gain a residence in virtue of being located in the state on government orders. In all these matters Ohio marked out a policy that has been followed ever since with diverse variations. For the good of the state, constitutions in the future carefully excluded the criminal and grossly incompetent persons from the exercise of the suffrage. At this early period Ohio stood almost alone with these provisions, and while they are not of great importance they show the foresight that was evident everywhere else in future years.

Louisiana came in as a state in 1812 with a taxpaying qualification, but there was a rather unusual alternative provided. One must have paid a tax within a year or else have purchased some land of the United States government. Of course the idea was to put a premium upon homesteaders and to encourage expansion into the undeveloped portions of the state. The suffrage laws have always been exploited more or less, but this is a unique case. The other formal provisions were restriction to white males, citizens of the United States, and one year's residence in the county.

Previous to this time very few of the constitutions mentioned citizenship. Louisiana marks the development of suffrage laws into better-rounded and intelligent form, but there were left out the protecting clauses against criminals and the mentally deficient. It took some years to bring forth a really complete suffrage law covering all the essential points that it is deemed necessary to touch upon today. The modern law usually deals with race, sex, citizenship, age, term of residence

in state and local division, special qualifications, such as tax or educational, exclusion of specified groups, as soldiers, students, inmates of institutions, the mentally deficient, paupers, and exclusion for crime. From now on it will be well to note to what extent the new constitutions cover these points. It has been observed that before the nineteenth century the constitutions were indefinite about race and sex, although these matters were taken care of more fully in the series of constitutions immediately following the revolutionary group. From this time on it will be found that a great majority of the constitutions use the words "white" and "male." In many there was nothing said about citizenship; and they seldom distinguished between a term of residence in the state and a smaller unit, such as the county or town. Nothing practically is found, except in Massachusetts in 1780, about exclusion of particular groups. But now Ohio takes care of this matter of special groups, while still being negligent about citizenship, and Louisiana reverses the situation. As has been mentioned once before, the presence of property and taxpaying qualifications automatically took care of other matters in the earlier days, or in the few cases where non-citizens and others who might be considered undesirable could vote because of satisfying the property or tax test the abuse was not sufficiently great to attract any attention. But with the passing of these provisions the bars were thrown down to great throngs of undesirable people, and lawmakers gradually awoke to the need of setting up new safeguards that previously had been unnecessary.

In 1809 and 1810 the property test received two more severe blows. By an act passed November, 1809,

Maryland abolished all tax and property qualifications[1] and specifically restricted the suffrage to white males, citizens of the United States, resident in the state one year. Thus was knocked out one of the highest qualifications remaining after the Revolution—fifty acres freehold or thirty pounds in money. This is particularly significant because Maryland was one of the original states and lay right in the heart of conservatism, surrounded by states which clung to their old tests for many years thereafter. Yet while taking down the barriers Maryland took no steps to provide in the constitution against an influx of undesirables.

Equally of interest is it to observe that South Carolina added to her constitution in 1810 an alternative to the fifty acres or a town lot prescribed as a suffrage qualification in the revolutionary constitution. The alternative ranks with that of Louisiana for unusualness. It was simply residence in the election district for six months, as well as a two-year residence in the state. Of course this simple alternative to all intents and purposes put a complete end to the property test. Two years was quite a high residence qualification, and that, together with the new six months' residence as an alternative to property holding, would indicate that South Carolina had come to look upon permanence and stability as the most desirable factors to secure the good of the state. Voters, according to this provision, must be white males, but nothing is said about citizenship.

The federal Constitution contains no definition of citizenship whatever. Citizenship was never defined by federal law until the Fourteenth Amendment was added

[1] Laws of Maryland, 1806–10; Nov. Sess., 1809, chap. lxxxiii.

to the Constitution and the Civil Rights Act was passed in 1866.[1] Prior to this time the question of citizenship was covered by the common law, which has upheld the principle of *jus soli*, by which all persons born within the limits and allegiance of the United States are deemed citizens.[2] The Fourteenth Amendment and the Civil Rights Act did no more than to declare this principle. Therefore in virtue of the common-law rule it came to pass that there were large numbers of persons of foreign parentage counted as United States citizens in the years following the Revolution. The largest group of such foreigners of course were Englishmen, and to a lesser extent there were French and Irish. There were still many malcontents in the country during the first decade after the Revolution. The number of those who counted themselves Britishers was not inconsiderable, as was evidenced by the fact that at the time of the Jay Treaty with England in 1795 British citizens were still clamoring for satisfaction of claims allowed to them in the Treaty of 1783. The matter of these claims was always a very sore point with the patriots. Certain Englishmen had lived among the colonists and refused to co-operate in conducting the Revolution. They had remained loyal to the British king and had done everything they dared to do and could do to hamper and defeat the cause of liberty. Small wonder it was then that their property rights were often invaded by the eager patriots who were fighting for liberty. Much personal property and even real estate were unceremoniously appropriated by the armed forces of the Revolution, at least under some

[1] 14 Stat. at Large 27, chap. xxxi; U.S. Comp. Stat., 1901, p. 1268.

[2] F. Van Dyne, *Citizenship of the United States*, p. 4.

slight color of legality, although often it was barefaced robbery. The owners were badgered and driven away from their homes and were outcasts in their own country. In many instances even their bodily safety depended upon their keeping discreetly quiet. An exactly similar situation is bound to occur in almost any war. Fervent patriotism takes no heed of property rights in spite of international- and domestic-law rules, and avowed sympathizers with the enemy cause do well to retain their liberty, to say nothing of their property.

One can readily appreciate then what happened during the Revolution when there was no centralized and powerful government to take care of the situation. Cases of disloyalty were dealt with as the temper of local patriots happened to dictate, and proceedings were decidedly informal and not matters of record. Hence when the war came to a close in 1783 there were a large number of British loyalists who claimed restoration of their property and various other concessions in satisfaction of their suffering during the Revolution. The United States diplomats who were delegated to draw up the treaty of peace with England were very able men and rightly considered that they represented a single, unified nation. In view of this it was only proper that they should take notice of the claims of Britishers and provide in the treaty for a commission to sit in Philadelphia and hear these claims and make restitution as might seem fit and equitable. This was done, and the commission was organized and proceeded to its work.

However, the United States diplomats were in an anomalous situation, as they very soon found out. They pretended to be dealing for a single, unified country; they

pretended to represent the United States just as British, German, or French diplomats would represent their countries. And it was expected that such properly accredited diplomats would conclude treaties of authority which the nation back of them would fulfil without question. But when the United States diplomats returned after accomplishing their brilliant success they found that they had not represented one single nation but thirteen jealous, spirited, belligerent, outrageously proud little nations that were not going to observe any treaty provisions unless they felt like it. To tell Virginia what she must do was like stepping on a hornet's nest, and staunch New Englanders would look with grim disdain upon attempts to coerce them. There was no central government legally or physically able to carry out these provisions of the treaty and restore property to British loyalists. It was necessary for the central government to appeal to the individual states to make restitution wherever the commission awarded it. These appeals were very coldly received, and the Britishers got the awards but no money; the individual states would not settle and the central government could not.

There is no doubt that this situation was the cause of a vast amount of ill feeling. The particular issue of the restitution of loyalist property was taken care of in the Jay Treaty with England in 1795.[1] But twelve years of hot bickering had done its work, and for quite a long time the foreigner was stigmatized and covered with opprobrium. The sentiment was very strongly rooted in the country that only real native "Americans," interpreted very narrowly, should participate in the government.

[1] W. M. Malloy, *Treaties.*

In Congress in 1798 distrust and opposition against the foreigners in general centered around Albert Gallatin, who then was Secretary of the Treasury. He was an able man, but his policy was bitterly attacked by the Antifederalist party, which was rapidly growing in strength. In such a situation it is rather hard to tell whether the ostensible cause of trouble is the real one. He was condemned because he was a foreigner, but quite likely this fact was overemphasized and exploited to achieve the desired end of discrediting his policy. At this time there was a decided reaction against naturalization and in favor of recognizing only citizenship by birth. The feeling culminated in a new Naturalization Act June 18, 1798, which made the residence period preceding naturalization fourteen years and required all foreigners to be registered. However, the former act was restored two years later and the period set at five years again.[1]

Naturalization of foreigners has always been a function within the exclusive control of the federal government. The first act of Congress on the matter was passed on March 26, 1790, and permitted the naturalization of "any alien being a free white person."[2] It has remained the same ever since except that after the Civil War, on July 14, 1870, it was enlarged to include Africans and descendants of Africans.[3] As the Naturalization Law now stands, free white persons and negroes are the only races that may be naturalized; the full period of residence must be five years, and at least two

[1] J. Schouler, *History of the United States*, I, 405.

[2] 1 Stat. at Large 103, chap. iii.

[3] 16 Stat. at Large 256, chap. cclv.

years previous to taking out final papers the alien must declare that it is bona fide his intention to become a citizen of the United States.[1]

In the early days, when a state constitution conferred the franchise upon "inhabitants" or "residents," these terms had been interpreted as meaning citizens.[2] These opinions were later discredited by decisions in the middle western states, but by that time there was not much excuse for the issue coming up.

Difficulties with France, growing out of the Jay Treaty, and the French and English war did not help to make the foreigner any more popular in this country during the first decade of the nineteenth century. England was riding roughshod over United States rights, impressing United States seamen, and denying the right of Englishmen to expatriate themselves and become United States citizens, and France was treating the United States with insulting contempt. The Jay Treaty did not solve such troubles as these, and the foreigners were roundly stigmatized in this country and their presence at the polls was not welcome. Complaints were voiced of their activities at elections, and while no serious attempt was made to exclude naturalized citizens the attitude toward them was distinctly hostile.[3] Indeed the participation of foreigners in elections had been anticipated long before in the controversy over

[1] U. S. Comp. Stat., 1901, p. 1329, sec. 2165.

[2] Samuel McClintock, *Aliens under Federal Laws of the United States*, p. 24.

[3] *Niles Register*, April 10, 1834. Correspondent complains of being surrounded at the polls by shoals of Englishmen and Scotchmen, disseminating campaign tickets and exercising great influence on the election.

the adoption of the federal Constitution.[1] The War of 1812 brought the spirit of antagonism to foreign participation in elections to the boiling-point. Many boys and indigent men who fought the battles of the country were excluded from the franchise, while natives of the enemy land and Frenchmen cast their votes as usual.[2] No wonder their indignation rose, and as no sensible means of excluding naturalized citizens could suggest itself, attention was centered upon breaking down the restrictions against propertyless, non-taxpaying soldiers who had fought for the country's freedom. This situation has been reviewed to show how the foreign element contributed its share to the expansion of the suffrage.

[1] Ford, *Essays on Constitutions*, p. 79. Correspondent dwells upon the deplorable possibility of foreigners having a hand in the government.

[2] R. Hildreth, *History of the United States*, VI, 317.

CHAPTER III

PROPERTY TESTS AT BAY AND THE ADVENT OF THE FREE NEGRO

Between 1815 and 1820 three new states on the western frontier joined the Union. They were Indiana, Illinois, and Missouri. The population of these states was made up largely of sturdy pioneers, men who were so busy fighting with nature for a living and pushing outward the boundaries of civilization that they found little time or inclination to speculate on political problems and suffrage philosophy. For the most part the population in these states was quite homogeneous. This region was not blessed with an element of well-born, aristocratic, and wealthy individuals ready to carry the burdens of the state, such as existed in New England and Virginia. Also there was no "riffraff" that had to be prevented from bringing ruin upon the nation. And furthermore there was no religious prejudice. In fact, these western states presented a situation that had never existed before since the country was first settled. Even the early expeditions of the seventeenth century—groups of courageous men who established the coast settlements—had among them aristocratic persons and on the other hand a distinctly servile group. Right down to the nineteenth century the Atlantic coast never was without its smattering of well-born aristocrats who demanded and secured special privilege whether they exercised it with decent regard for the proletariat or not.

In present-day glorification of the heroic work of the Pilgrim Fathers and their contemporaries one is quite likely to lose all sight of antidemocratic institutions and practices.

The Jeffersonian movement in the beginning of the nineteenth century marks the first step toward personal freedom and independence of government. Jeffersonian Democrats did not want the government to do things. The less the government had to do the better they were satisfied; the smaller and more independent the units of local government were the better. How this spirit had to combat the last stand of conservatism and aristocracy is seen in the rout of the Federal party. The defeat of that party not only brought to an end the power of that group of aristocrats, but actually meant the end of the group as a definable element in society. Disintegration took place in the eastern states, while across the Appalachians the aristocrats never traveled. Hence in these frontier states of the Mississippi Valley there was this entirely unique situation. All men were on a plane socially, and government was merely a convenience to them, not a semi-sacred institution. That all men should participate in what government there was, was a foregone conclusion. There was no aristocratic element to deal with, no poor-servant and artisan class, there were no scholars, no philosophers, no theologians, just hardy pioneers setting up a frame of government because the population was getting big enough to need it. There was no suffrage problem for them. In future years the foreigner and the free negro came to be problems, but at this time there was no suffrage problem. Hence Indiana in her constitution of 1816 admitted white

male citizens who had lived in the state one year. Illinois did the same in 1818, making the residence only six months, however. Both states disfranchised for infamous crimes. Missouri in 1820 provided for suffrage in just the same way but insisted upon three months' residence in the county. Nothing was said in any of these constitutions about unnaturalized foreigners. The scramble for immigrants had not yet come.

It should be mentioned that in the Missouri constitutional convention of 1820 an attempt was made to insert a taxpaying qualification for suffrage.[1] It seems that no one had the hardihood seriously to urge anything more conservative, such as property owning, and the fate which met the modest little taxpaying suggestion is significant evidence of the impatience these westerners had for such movements. It was defeated two to one, with hardly a protesting voice in its defense. There was also an effort made to reduce the customary age limit to eighteen years instead of leaving it at twenty-one. But the suggestion for admitting boys to the polls at the age of eighteen no doubt illustrates the social conditions in this part of the country. Everybody had to do a man's work, and boys of eighteen years were householders and independent, self-reliant men of affairs. No wonder that property qualifications and tax requirements were held in great contempt out there. In the East these old requirements were breaking; in the West they never took root.

Perhaps this statement should be qualified when the Mississippi constitution of 1817 is brought to light. And yet Mississippi is hardly typical of the western

[1] Mo. Conv., 1820, *Journal*, p. 34.

frontier. The soil of Mississippi had been occupied by adventurers coming in upon the southern coast long before the states to the north were explored. Old World ideas had established roots in southern Mississippi and Louisiana, and it is not to be wondered at that political sentiment would be slightly different and a bit more conservative than it was to the North. Mississippi provided the same as the other states of this period but injected a requirement demanding payment of a state or county tax with an alternative of doing military service in the state militia. As enrolment in the militia was compulsory and the qualification simply mentioned "a" tax without fixing the amount, the restriction did not amount to much in practice.

Two other states coming in during this period deserve some attention. They are Maine and Alabama, both of which joined in 1819. As might have been expected, the matter of a property test was seriously considered in Maine. The same forces which made for liberalism in the West did not operate so unobstructedly in New England, although they were present. Here conservatism was well intrenched, but even so the property test could not carry the day. The delegates to the convention could not tolerate a high property test, and they believed that a low one did more harm than good. However, the element in favor of property qualifications was big enough in the state so that the convention felt that it was necessary to make some sort of explanation of its decision. A statement dealing with the suffrage question was sent out, which was called an "Address to the People from the Convention," and summed up the situation in these words: "Pecuniary qualifications of

electors have been productive of little benefit; sometimes of injustice. They are too often relaxed or strained to suit the purposes of the day. The convention has therefore extended the right of suffrage, so that no person is disqualified for want of property unless he be a pauper."[1] This statement seems to convey the idea that the convention was not opposed to a property test on general principles but thought it could not be worked successfully. The truth of the matter probably is that few men in the convention cared to champion a losing cause and aimed to conciliate all sides with an evasive statement.

As the quotation intimates, paupers were excluded from the polls. Maine also began to see the desirability of excluding certain other persons. The position of criminals occupied a considerable amount of attention in the debates. Strong arguments were made in favor of disfranchising men convicted of an infamous crime.[2] But it was pointed out in answer to this that justice-of-the-peace convictions were not reliable, that evidence of conviction was not easy to have at hand on election day, and, furthermore, that no man should be burdened with such a penalty through life, casting a stigma upon him and causing him to maintain a resentful attitude toward the government for the rest of his days. The move to have criminals excluded did not prevail, and this is rather unusual in view of the fact that most states did exclude criminals when they thought of it. For the most part men have been very ready to agree that if anyone deserves exclusion from the suffrage it is the person guilty of crime.

[1] Maine Conv., 1819, *Debates*, p. 106. [2] *Ibid.*, p. 123.

This convention, however, did exclude persons under guardianship, as well as paupers. Soldiers, sailors, and marines in the employ of the government could not acquire a residence under this constitution and neither could students in a seminary of learning. These steps were not subjected to debate. The points are significant only because they indicate the beginning of attempts to guard the polls from unsafe voters when the property bars were let down. Later on the exclusion in specific terms of soldiers and sailors, students, paupers, maniacs, and criminals came to be the regular practice, without any debate as to its obvious desirability. The matter is not of great importance, but a thoroughly good and comprehensive suffrage law should take these matters into consideration, and it is worth while noting how quickly the incoming states appreciated the problem and took steps to meet it. The residence requirement was fixed at the extremely low period of three months in the state. There seems, however, to have been no controversy over this.

The Maine convention promptly suppressed an attempt to exclude free negroes along with Indians not taxed. Nobody had a word to say for the Indians, but it was urged that Indians had never been considered a part of the body politic, implying that negroes had been so considered and thus should not suffer disabilities. Of course the negro never was present in large numbers in Maine, and there, as elsewhere, righteous men invoked high principles and lived up to them with punctilious consistency—when doing so could not harm the community in the slightest degree. They took pride in being magnanimous when there was no harm in it. So

the convention with righteous indignation promptly suppressed a move to exclude the negro.[1]

In Alabama during the same year negro suffrage was quite as undebatable, but what a different decision was reached! Alabama remembered about soldiers and sailors but forgot the students. Many crimes—perjury, forgery, bribery, etc.—were enumerated as being cause for exclusion, but insane people and paupers received no attention. No one state as yet completely covered the suffrage problem.

In the same year, 1819, Connecticut provided herself with a new constitution, and in it are to be found the relics of conservatism. The *Journal* of the convention which drew up this constitution gives no evidence of any keen debate or vigorous effort to get rid of the traces of property qualifications. Several alternatives are found in this constitution. A voter must possess a freehold estate of seven dollars yearly value, or else he must have performed one year of military duty, or have paid a state tax within a year. Superimposed upon all this was the requirement that voters must sustain a good moral character. The old New Englanders never could get the distinction between a pious wish and an enforceable law, and they would write a pious wish into their constitution with the same solemnity with which they drew up practical laws. It is hard to understand what the lawmakers ever intended to do with such a provision, but there it stands, to all intents and purposes a definite restriction upon the suffrage in Connecticut. No

[1] Maine Conv., 1819, *Debates*, p. 125. The scribe records the incident in these brief terms: "Mr. Vance and Dr. Rose spoke in favor of the motion, but it did not obtain."

evidence is at hand to show that the legislature ever defined a moral or an immoral character, and it is doubtful if the clause ever was the subject of any litigation. Connecticut covered the case of criminals in this constitution very fully, enumerating various crimes, and it is to be wondered whether the convention ever expected others than the enumerated criminals to be excluded under the moral-character clause.

The following decade, 1820–30, witnessed three of the most noteworthy constitutional conventions in the history of the United States.[1] Jeffersonian democracy had done its work. Delegates came to the conventions fired with determination to vindicate the teachings of democracy or, on the other hand, to make one last heroic stand for conservatism and property rights. In New York there was staged a battle royal centering largely around the suffrage question. The property interests were represented by some of the best political talent in the country, Chancellor Kent being one of the most conspicuous delegates. They were determined to save as much of special privilege for themselves as they possibly could, and only acquiesced in compromise when they saw that their cause was hopeless. For many years it had been obvious that property was bound to lose its prestige everywhere in the Union. The new incoming states in the Mississippi Valley were not even giving property a taste of special privilege. The new states farther east were tempering property qualifications with alternatives that paralyzed, and when property tests were included they were so very small and insignificant as to be of no importance. The propertied

[1] New York, 1821; Massachusetts, 1821; Virginia, 1830.

class had seen its best days and knew it. Only in such states as New York, where there were large and ancient property interests bulwarked with many years of special privilege, could a vigorous fight be put up, for it must be remembered that the electorate is something like a closed corporation, only enlarging itself by co-opting whom it pleases. All extension of the suffrage must come through those who have it. In New York there were very powerful property interests capable of exerting vast influence.

A certain amount of propaganda against property qualifications had been spread over the state previous to the convention, but the precepts of the new democracy hardly needed propagation. What was needed was talent capable of bearing down the conservative vested interests and courage to take advantage of numerical majority and draw a constitution that the people really wanted. In New York this was not quite done, and the people remedied the fault by means of a referendum five years later. The popular opinion now was that a property qualification always was bad. The proposition was advanced that if a property test were small it tempted to fraud, and if it were large it created an aristocracy. The idea also gained popularity that the property holder, by virtue of his wealth, was better able to protect himself than the poor man, who therefore needed government protection most.[1] And yet there seems to have been prevailing a sort of undeliberative feeling for manhood suffrage that felt no need for argument.

The Committee on Elective Franchise in the New York convention of 1821 proposed to abolish all property

[1] *Niles Register*, XIX, 115.

distinctions and make the right to vote uniform.[1] This committee advanced the proposition that property distinctions were of British origin, where the various classes of society needed special representation. In the United States there was only one homogeneous group—the people—and all interests were identical. The only qualification should be virtue and morality. But although the property interests had been unable to get a favorable committee report they marshaled their forces and proceeded to assail the liberal position of the franchise committee.

It was very soon evident that a general-property test could never be put through. All proposals, however mild, were decisively repudiated. But the property interests were not lacking in resourcefulness. They immediately proposed to retain a property qualification for voters for senators, and on this proposition they based all their hopes. It was insisted that real property afforded the most substantial security to the government. It was considered to be the main source of wealth from which the state could draw its revenue. Its immovable and imperishable qualities made it a secure and tangible bulwark to which the state might tie. Possession of real property was considered the best possible evidence of a firm interest in the well-being of the state, would make the owner cautious about public expenditures, insure economy, etc. The same arguments that had served the purpose for two centuries were brought forth. And the suggested compromise of having a property qualification for electors of senators provided a fine opportunity to press these arguments with new force.

[1] N.Y. Conv., 1821, *Debates*, p. 178.

The suggested compromise also offered opportunity for a new theory of representation to be developed. It was said that men have equal rights, to be sure, but if every man has life and liberty to be protected the property owner has something more. Hence let the unpropertied man vote for members of the lower house, but let the senate serve as a protection for property and allow only property owners to vote for senators. When the government protected all a man possessed, what more could he ask? But in all justice the man with property should have that protected as well as his life and liberty. This argument supported in a new way the well-known doctrine of checks and balances. It was urged that it was not expedient to derive both houses from identical constituencies, and what could be more logical than to give to property owners special representation? These arguments made a very strong appeal. Even the ablest of the progressives seemed not to recognize the illogical position of property owners in claiming a larger share in supporting the government. The truth seemed never to be brought out that the real producer of wealth contributed to the support of the state every day he worked, and whether or not he owned property was quite inconsequential. Of course property owners would not accept such a doctrine, but it is strange that the unpropertied men did not see it either. They found these arguments of the conservatives exceedingly hard to combat and many times just sullenly refused to agree to their arguments without attempting to dispose of them.[1]

[1] Yet one speaker did seem to have this idea in mind when he declared, "It is said that wealth builds our churches, establishes our schools, endows our colleges, and erects our hospitals. But have these institutions been raised without the hands of labor?"—*Ibid.*, p. 225.

But the idea of looking upon legislators as representing certain defined interests, life, liberty, property, etc., involved a division of labor, as it were, that was quickly shown to be absurd. If the argument was sound, men should be represented according to the amount of property they owned, the wealthy man enjoying the largest representation, the man with only life and liberty enjoying the least. Also, it was pointed out, such a scheme would at once create clearly defined political groups based on property lines, which circumstance would have a distinctly unwholesome effect on the body politic. Cleavages on political questions would then cut horizontally, as it were, instead of vertically; that is, men of all classes would not take sides on the merits of the issue at hand, but men of particular classes would line up according to their property holdings.

Such a situation would cause to exist in every community two distinct more or less hostile factions based solely on property. This would involve a perpetuation of an illusory division of interests that would be quite unfortunate.

Another aspect of the case was this: The prejudice against foreigners developed in the twenty years following the Revolution had by no means died out, and far-seeing men could easily look forward to the new foreigner problem destined to trouble the states in later years. The new influx was to be from Ireland and Germany as well; the Englishmen and the few Frenchmen were rapidly disappearing, but the other type was coming. These conventions in the early twenties really came between these two periods; but statesmen saw the coming throng and urged that property tests would

protect the state against the tumultuous, disorderly Irishmen in the cities and the Germans in the country. It was an argument that made a strong appeal, for men yet felt that America was for Americans and heartily resented the participation even of naturalized citizens in the affairs of government. It was not until the western states felt the need of foreigners to develop their untilled lands that this prejudice was broken down, and even so it died hard and even resulted in the formation of very considerable political parties. It was just about this time, 1821, that the lines upon which this new problem was to be fought out began to appear. There is no doubt that this argument had as much to do as any other single point with maintaining the taxpaying qualification.

There was every evidence in the debates of this convention that the delegates were not sure of their ground, that they were not at all positive as to what the people really wanted. This comment surely is justified by the fact that less than five years after the convention the people repudiated their suffrage clause. In every convention advocates insist that they are backed up by a majority of the people, of course, but the tendency to vacillate, propose compromises, and in general exhibit great uncertainty shows that here there was a real doubt. The mere fact that the convention was willing to tolerate the endless debates illustrates the uncertainty, and even so the final vote on the property test for senatorial electors was quite decisive. After an exceedingly long wrangle, dragged out by endless speeches merely reiterating the same old arguments, the property interests succumbed one hundred to nineteen.[1] Property had

[1] N.Y. Conv., 1821, *Debates*, p. 270.

made its last stand and had failed. All that could be secured was a trifling taxpaying qualification with a paralyzing alternative.

The tax qualification was put in these terms: Electors must have paid a state or county tax, or have performed military service, or have worked on the highway, or have lived three years in the state instead of the one year prescribed ordinarily. These alternatives, of course, have every earmark of makeshift compromise. These were the only things many of the progressives had the courage and skill to insist upon, and of course they drew the sting out of the taxpaying test. It can be understood how these measures were nervously and apologetically inserted to secure what was really wanted, whereas the property and tax tests could have been boldly repudiated altogether.

Chancellor Kent feared excess of democracy. He would not bow before the idol of universal suffrage.[1] It would be treason to the agricultural element, the backbone of the state; this must have safeguards thrown around it as protection from the city mob of irresponsibles. He painted a dreadful picture: "The Radicals of England, with the force of that mighty engine [universal suffrage], would at once sweep away the property, the laws, and the liberties of that island like a deluge." He heaped scathing contempt upon the proposed alternatives. Serving a day upon the road or an idle hour in the militia, said he, was a mere nominal test of merit. The convention had not the courage to defeat him utterly, and hence the compromises.

[1] N.Y. Conv., 1821, *Debates*, p. 219.

But the convention was not so disdainful about the "idle hour" in the militia. It seemed fundamentally unjust that the men who fought the nation's battles might not vote. Many a veteran of the War of 1812 found the polls closed to him, and this offended the innate sense of justice in men. An attempt was made to get in a clause that would enfranchise veterans but not the militiamen, a great many of whom, it was said, never did anything but parade. One of the generals said that he was not in favor of permitting anyone to vote who was not to be found when the taxgatherer or the enemy appeared, and yet he wanted only veterans to be relieved of taxpaying tests, not the militiamen. Indeed the plight of veterans was greatly exploited in oratorical and emotional manner. The president of the convention contributed to this and elicited a sarcastic retort from one member:

> Vivid and impressive as was the picture drawn by our president of the gallant officer who died of a broken heart because, as it would seem, he was not an elector, even a limited fancy might add to the apparent injustice of our country. Suppose the gallant hero had been a youth of twenty years of age—is it proposed to embrace his case and make brave infants voters?[1]

And yet not a few men were convinced that if a brave infant was able to carry a gun for his country he was able to carry a ballot to the voting booth, and there is no little doubt that if the gentleman had continued with the sarcasm "brave infants" might have been provided for as well as their elders. A deep-seated affection existed then as now for the boys who went to war, and only calm judgment, not lack of appreciation of their

[1] *Ibid.*, p. 252.

service, resulted in keeping the age limit at twenty-one. Militiamen as well as veterans were exempted from the tax test by a vote of sixty-eight to forty-eight.[1]

As to workers on the highway, the franchise was extended to them because such work was considered equivalent to a tax. It is unnecessary to develop the argument.

But the property test was not the only problem that occupied the attention of the New York convention in fixing the suffrage qualifications. The free negro was coming to be a problem at this time. And in fact it was in this very convention that one of the first great battles for negro suffrage was staged. From this time on negro suffrage was an issue everywhere outside the strictly southern states. In the border states, of course, the battle waged the fiercest. Some negroes were being set free, others were escaping from their owners, and naturally most of them went no farther north than across the border of a free state. The number of such men was rapidly growing, and before long the problem of negro suffrage eclipsed the problem of the foreigner. Foreigners were quickly absorbed and ceased to advertise the fact of their difference from native Americans, but the negro never could hide his identity, and black faces at the polls invariably roused a storm of indignation among a certain class of people. Hence there was no hope for settlement until the Civil War was over.

New York was not a state that suffered greatly from the presence of the negro, and yet there were enough of them there to stir up very keen interest in the matter, and the convention of 1821 was very ready to discuss

[1] N.Y. Conv., 1821, *Debates*, p. 283.

any suffrage issue to the bitter end. At once the proposition was set forth that color had nothing to do with ability to vote. Color was declared to be an utterly foolish standard, having no rational basis. There was no excuse for considering the matter of color at all. All free men should be treated exactly alike. It was said that to deny the negro the right to vote was to "punish the children for the crime inflicted upon their parents." The negroes constituted a one-fortieth part of the population, and the present was an excellent time to begin training them for intelligent citizenship.

It seems that the state law of New York prevented the negroes from serving in the militia, although there is little doubt that they would have been welcome enough in time of war. The argument that since they were not in the militia and hence were not under arms and ready to defend the state was answered by saying that there was no good reason why they should not be in the militia.[1] This exclusion from the militia led to another consideration. Was it not unwise to set up and perpetuate distinctions that might cause serious rupture in the future? Such a policy of exclusion from participation in government activity was calculated to

[1] In connection with this situation it is interesting to recall to mind an act of Congress on May 8, 1792, which kept the negro out of the militia. It was by no means universally approved. The negroes had done considerable service in the Revolution, and many people held a charitable regard for them because of this. Von Holst (*Constitutional and Political History of the United States*, I, 303) says with regard to this measure: "The Republic now praised them for this [service in the Revolution], while Congress declared them unworthy to serve in the militia. This did the slaveholders a service that involves the greatest consequences, for it had now been recognized as a fundamental fact that race and color were principles which should necessarily be taken account of in making laws."

inspire jealousy, resentment, distrust, and hatred that might prove quite inimical to the best interests of the state and would surely be inconsistent with sound policy. It would alienate one portion of the community from the other, and such a state of affairs could never make for good.

But the argument which carried the most weight seemed to be that as the negro was subject to all acts of the legislature he should have a voice in the election of representatives. He also was taxed if he owned property (which was seldom), and in such cases the sacred principle of no taxation without representation was ruthlessly violated. It is interesting that arguments having the most weight very frequently proved weak and unworkable when carried out consistently. This has been particularly true of the doctrine of natural right, the doctrine that men had a *natural right* to vote. It was used so much that a few paragraphs devoted to it here will not be out of place.

In the matter of suffrage a principle of exclusion must be followed. No visionary even, worshiping an abstraction, would go so far as to support universal suffrage absolutely. The possibility of allowing infants and imbeciles to vote is not debatable. Thus inevitably, even when a person exploits the natural, inalienable, inherent right-to-vote doctrine, he necessarily excludes someone; but he sets whatever limitation seems to him consistent with his individual interpretation of natural right. Hence every expression of natural right is anomalous. Every individual who uses the phrase determines upon what he thinks is right under the circumstances and in the light of his understanding and

then uses the words natural, inalienable, and inherent in order to give his opinion a sonorous sound. Hence the phrase "natural right to vote" has been quite meaningless when subjected to close analysis. Practically all who have used the doctrine have tacitly left out young men under twenty-one, almost all have left out women, a large number have left out negroes, and usually criminals and paupers have been left out by common consent.[1] But the doctrine of natural right has had tremendous influence, and there appears the strange phenomenon of suffrage being carried forward on a tide of fallacies and specious doctrine.

There would surely be reaction and a return to former conditions were it not for the fact that the forward movement has really had a sound basis. The reason suffrage has broadened is because it was best for all mankind that it should broaden, not because any particular group had an inherent right to the franchise. Personal rights are completely swallowed up in a doctrine of social good, of expediency, and in the past have been sacrificed to it almost unconsciously. Men have been unwilling to say that certain groups have been left out or admitted because it has seemed best from the social point of view. They have much preferred to dilate on personal rights.[2]

[1] It is exceedingly difficult to bring many people to a full appreciation of the anomaly. Those who use the phrase "natural right" insulate themselves and labor under mental inhibitions that rational argument can never penetrate; they are moral grafters who in fatuous conceit set up their idea of what is just and proper and try to surround it with a sacred halo and make it absolute.

[2] This point is treated brilliantly by Mr. Albert Shaw in *Political Problems of American Development*, p. 123. He says in speaking of woman suffrage: "It becomes a question of experimental detail whether

Quite a number of men in this convention were evidently opposed to negro suffrage, but they were more or less apologetic about it and did not like to speak out plainly. They made long explanations of their votes and based them usually on the statement that the negroes were probably inefficient and incompetent, unable to exercise the right in a proper way. But a few strong-minded individuals spoke loudly about matters which many secretly believed but did not care to espouse because of the difficulty of reconciling popular ideas of democracy with exclusion of negroes. The colored race was said to be far, far below the white in the social structure. It would disrupt society to admit these debased men to the suffrage. When they could be met as equals in social intercourse, then would be the time to extend the suffrage rights to them. Obviously such arguments as this and others of the same sort reflecting upon the negro's ability and mental capacity would apply with equal force to any group of men suffering similar limitations. This struggle over negro suffrage merely illustrates again the recurring situation in connection with suffrage extension—firm-rooted determination not based on logical argument that would bear analysis. Invariably the partisans on either side would argue the question of right, the question of democracy, taxation, representation, consent of governed, social position, and always avoid the real determining factor of expediency. Those who sought to secure suffrage for the negro knew that they could not support their cause by saying that

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the women assist in the carrying on of the mechanical tasks of government, or whether they leave the business of voting and office-holding to men."

they believed it would be for the good of the state, so they invoked democratic philosophy, sympathetic interrest, and natural rights. The opponents did not care to be so brazen as to declare that admitting the negro would be a bad thing for the state regardless of his rights, the dictates of democracy, the Declaration of Independence, and what not. So they twisted and squirmed as best they could to construe democratic philosophy against those who invoked it and to show that the negro's rights were not invaded. They were driven to the doctrine of expediency but would not admit it. In nearly every case where the issue rose and the negroes were excluded it was because of a sullen conviction that it would not be right to let them in. Men were easily brought to a point of violent indignation, deaf to all argument, by such persons as Colonel Young, who recalled the unfortunate mistake in New Jersey that permitted women to vote there for a time. He became almost apoplectic over the possibility of a negress voting in New York. The point simply is that many a time, in fact in the majority of cases, a decision was reached through ridiculous channels that would have been arrived at just the same were the question dealt with in a rational manner.

After a very long debate a compromise was effected. Full negro suffrage had lost by a very narrow margin. Now it was proposed to grant the ballot to those negroes who owned property. This proposition, of course, struck at the very root of the opposition argument. Evidence of holding property was considered pretty good indication of interest in the community and capacity to act intelligently. Lack of such capacity had been the

chief argument against the negroes. Enough of the opposition was persuaded that this was so, and a clause was inserted in the constitution granting the ballot to negroes owning $250.00 worth of property on which they paid taxes. Of course such a compromise was quite irrational; if there was any virtue in the principle involved it should have been applied to all men. But there were enough men in the convention satisfied with such a compromise, and hence the property test was prolonged in New York for the benefit of the negro race.

A great many times delegates spoke of coming universal suffrage. The concept seems to have penetrated this convention as it had no other previous to this time. Many contemplated it with great alarm; others looked upon its coming with great complacency. Some delegates saw the way the wind was blowing—that every group which had the slightest claim to suffrage could find defenders in a convention, that compromise and logrolling inevitably would let down the bars on every side, and that every step in advance made the next step doubly easy. It is significant that the suffrage extension did run smoothly until it struck the negro problem; getting over the race barrier was a much more difficult matter than letting a few more white men in by one means or another. In fact there are three very important things to note in connection with the debates on suffrage in this particular convention: First, the property test was easily disposed of. Those who wanted it saw that their cause was lost and devoted their energies to securing a taxpaying qualification. Secondly, the taxpaying proposition elicited thorough, intelligent, honest,

and moderate debate, with opinion fairly evenly divided. Thirdly, the negro-suffrage issue plunged the convention into a turmoil of irrational, bombastic, verbose oratory, hiding prejudice, indecision, and stupidity.

Five years later, in 1826, a referendum was allowed on the taxpaying clause of the constitution and the voters of the state turned it down. Thus New York in 1826 in a most effective and democratic manner put away once for all property and taxpaying qualifications for the suffrage. There had been considerable indecision exhibited in the convention, and public opinion seems to have crystallized soon after, if indeed it had not been well formed before. Seldom has it happened that a state has made such a significant step in such a fitting way.

In Massachusetts the property qualification for suffrage had made its last stand in 1820, when a constitutional convention was called to amend the old constitution. Popular interest was aroused in the matter of suffrage extension, and there was every indication that property was going to be hard pressed to hold its own.[1] The sentiment prevailed that every man who was subject to do service for the state or who contributed to its support in the way of taxes was entitled to a vote. The practical side of the issue was stressed much more than the philosophical. Why the ballot should have been looked upon as the only fitting reward for paying taxes it is hard to see. The state protects life, liberty, and property and performs all the obligations and functions implied thereby. But these seem not to have been recognized as a return for taxation. Suffrage

[1] *Niles Register*, XIX, 115.

extensionists seem to have blinded themselves to the many good things they have received from the state as citizens, not as voters.

The defenders of property tests quickly demolished the theory of "right" invoked by those seeking to extend the suffrage. The argument was then immediately shifted to the question of expediency. It was said that the property test encouraged industry, economy, and prudence and gave dignity and importance to those who chose and those who were chosen. Further, it was said that men who had no property should not act, even indirectly, on those who had, and exploit their wealth. To permit these things would work ruin to the state. Other men believed that the property qualification had a very salutary effect on young men, inducing them to practice industry and careful habits.

It is also interesting to note some perversions of the old democratic arguments. It was said that to let the unpropertied vote would surely mean their exploitation by employers, and then the state would have, not a free electorate, but one controlled by capitalists able to swing elections at will. Another perversion that had been used before was utilized to defend the taxpaying qualification. Instead of "no taxation without representation" it was declared there should be "no representation without taxation." The most talented statesmen of the country were present and defended the property test in one way or another. The venerable John Adams was there and painted dire pictures of what would happen if the franchise were extended. Daniel Webster and Joseph Storey gave ample support.[1]

[1] Mass. Conv., 1820, *Debates*, p. 135.

But in spite of all this talent property tests did not stand a chance. The arguments were attacked sometimes with able retorts, more often with fallacious reasoning, but it made no difference, men had had enough of special privilege and were determined to get rid of discrimination on the basis of property. Men said that they had a natural right to vote, but it only took a few words to ruin that argument utterly. Men said that they should not be governed without their consent, but the others pointed to the negroes. Men said that they should not be taxed without being represented, but the others pointed to women. Men said that universal suffrage was a glorious ideal, but the others pointed to minors. Men said that they should be permitted to vote in order to defend their rights, but the others pointed to manifold benefits received from the government even by those who could not vote. Finally men said that they were going to vote anyhow, and the others threw up their hands in despair. The best talent in the country, profound arguments, historical evidence presented by the learned Adams, all the conservative forces of the state, could not stay the onward sweep of suffrage expansion. The only thing that accounts for it is a deep-seated, firm, but more or less unreasoning, conviction that all men should vote. Rude men from rural districts would stand helpless before the intellectual statesmen thundering at them in resounding periods. They would voice a few idle arguments and then vote on the strength of their inbred conviction. The most impressive thing about this entire movement toward broader suffrage is that men came to be filled with a fixed determination that as this country was a democracy

all men should have a hand in running it. They were ready to argue, but were determined to have their way in any event. The political thought of the past twenty years had brought men to a realization that they were part of the government, and now they wanted to get their hands in it.

But in Massachusetts the process had been very slow. It will be remembered that the normal progress was from real estate property tests to a personal-property alternative, to taxpaying, and then to no limitation. Massachusetts had reached only the point of transition from the personal-property alternative to taxpaying, for this convention provided an amendment to the constitution that all who paid a state or county tax should vote.[1]

It is necessary now to pass over a few years and come to the situation as it was in Virginia in 1829. It will be remembered that Virginia labored under a very limited franchise. Great stress was put upon ownership of real estate. This situation in some ways had exerted an unfortunate influence on the development of Virginia. Legislation and official positions were practically confined to landholders. Small landholders and very worthy men who owned no property had avoided Virginia.[2] And just this type of men Virginia needed to develop her resources and keep her in pace with other states. Sturdy, rugged pioneers, men who were ready to seize upon undeveloped land, far from the centers of city life,

[1] Originally it was framed as merely a "state" tax, but it was objected that some day there might be no state tax and thus all would be disfranchised. Daniel Webster said the millennium might come too, and so he approved of the change.

[2] McMaster, *History of the People of the United States*, IV, 393.

and make something of it were not the sort of men who were willing to tolerate suffrage restrictions. They were the kind of men who were populating Illinois, Indiana, and Wisconsin, the kind of men who cared very little about government anyhow, who looked upon it as a mere convenience but would not consent to have it autocratic in the slightest degree. Where they were in the majority, as in the western states, the question of property restrictions never arose. These were the men whom Virginia was driving away from her border. Then too there was a steadily growing class of men within the state who paid taxes and yet could not vote. Conservatism was strongly rooted in Virginia and bid fair to hold the reins a few years longer.

In these circumstances a constitutional convention was called in 1829. A majority of the delegates and people at large considered the chief question at issue that of suffrage. But the very first presentation of the question in debate closed the door against any argument on the propriety of some kind of property qualification.[1] A resolution was put before the house providing a freehold qualification, the point left open for debate being the size or value of the freehold to be required. Such men as Madison, Monroe, Marshall, Randolph, and Upshur were there to defend the freehold qualification. At no time was there serious danger of its being lost. So the debate at once centered around fixing the size or value of the freehold.

A rather peculiar situation existed in Virginia. There were very large tracts of land in the western part of the state, but this land was practically valueless. On the

[1] Virginia Conv., 1829–30, *Debates*, p. 345.

one hand it was thought desirable to allow those pioneers who explored and settled this land to vote, for in many ways they were the finest type that any state could boast of. And on the other hand certain speculators had obtained title to large areas of this land, and if a mere freehold were to be a license to vote they could dispose of it in small tracts and conceivably could work great corruption by turning it over to undesirables. Hence it was better to prescribe to the freehold a fixed value or a fixed area that should entitle a man to vote. But the problem was complicated because of the more thickly populated East. If a value were fixed, the eastern owner would be satisfied, for a small piece of land would be valued relatively high, but the westerner must own a great many acres of land in order to be worth as much as the easterner. But if a certain size were fixed, the westerner could easily satisfy the test, while the man in the East would find it a hardship. But even so a property test of some kind was a foregone conclusion.

The virtues of the landowner were loudly extolled. He was the only safe repository of civil power! The very fact that he possessed land would insure his being cautious, wise, and prudent in dealing with the state finances, for he paid taxes and supported the state. If the rabble were let in property would be exploited. But it was not necessary to argue very hard. Everything went well here for the property owners. In answer to the argument about taxation and representation they said that the interests of the property owner were so closely identified with the interests of other men that no possible

harm could come from leaving the exercise of the franchise with them.

The opposition to the property interests was characterized by an attitude of bitter hopelessness in great contrast to the situation in New York and Massachusetts nine years before. Here in Virginia, the original stronghold of America's aristocracy, the democratic fever of the age had not yet penetrated. In some other states, Rhode Island, for instance, there was plenty of discontent, but inability to secure an extension of the suffrage. In Virginia all was peaceful. The element that would have made a loud outcry against the restriction of suffrage had been driven away from the state, and hence it was free of the turbulent Democrats who were making life so miserable for the old Federalists up North. Office-holders in Virginia exerted not a little influence, and to a man, of course, they favored a restriction of the suffrage to those who possessed a freehold. The feeling of bitterness was occasionally exhibited toward these smug office-holders who spoke so highly of the *status quo*. They said that things were moving splendidly and that it was foolish to make a change. But they did not always escape without suffering a retort.[1] However, the most serious consequence of the restricted suffrage, in the minds of most of those

[1] In answer to one of these men it was said: "A good official station has a charming effect in smoothing the asperities of life and imparting brighter tints to the scenes around one. But it does not follow from all this that the people are content with their disfranchisement. I wish the worthy gentleman a long continuance of the advantages he has so richly merited, but my first wish is for my country."—Virginia Conv., 1829–30, *Debates*, p. 360.

who did urge a broader extension, seemed to be the continued tendency to drive worthy, valuable men out of the state when they were needed so badly.[1]

The ultimate result of the labors of this convention was a rather muddled qualification that was sufficiently illiberal to satisfy the old guard. It provided that one must have an estate or freehold worth twenty-five dollars, or be in occupation of a house worth twenty dollars yearly, or else be the father of a family and pay taxes. This convention also rounded out its work by disfranchising for an infamous crime and excluding the insane and paupers and also soldiers and sailors. The negro question naturally could not arise in Virginia, and the position of the foreigner was no problem here.

[1] A delegate complained: "I have seen respectable young men of the country, the mechanic, the merchant, the farmer of mature age, with intelligence superior to that of one-half the freeholders, and glowing with a patriotism that would make them laugh at death in defense of their country; I have seen such commanded to stand back from the polls, to give way to the owner of a petty freehold."—Virginia Conv., 1829–30, *Debates*, p. 353.

CHAPTER IV

THE END OF PROPERTY AND TAXPAYING QUALIFICATIONS AND THE DEADLOCK ON THE NEGRO QUESTION

The spirit of democracy fostered by Andrew Jackson and prevailing through the thirties is to be contrasted in some particulars with the Jeffersonian democracy in the twenty-five years preceding. Both men were ardent Democrats, but Jackson was a new and energetic sort. While the earlier doctrine tended to belittle government functions, to decentralize the machinery of government, to place emphasis upon local institutions and stimulate the people to govern themselves in just as simple a manner as they could, and to cut the business of government down to a minimum, the spirit of Jackson's time was to look upon government machinery as a vast and mighty engine belonging to the people, in the running of which they should all have a hand. The more people there were in the government organization the better. Any man who knew enough to write his name was considered fit to be president, and lacking opportunity to get that office he was encouraged to get any other berth which might present itself. The common man on the farm and in the workshop was goaded into a realization that he was part and parcel of a great government, that nothing was too good for him, nothing was beyond his ken, and that all should mix in the vast machinery of the state. The proletariat was exalted, and special privilege was repudiated in riotous denunciation.

The political turmoil following upon Jackson's inauguration in 1829 led to a general awakening of civic consciousness such as never had been known before. The man who took no note of what was going on in politics must have been indeed a dull one. This stirring up of political interest could have but one outcome—a desire to gain effective means of expression. While Jacksonian Democrats may have had little to say directly about the suffrage, all that they stood for necessarily involved the very broadest suffrage. Universal participation in government function could not possibly tolerate a restriction on white manhood suffrage. Other factors of course contributed to the case against conservatism. The vast expansion of territory in the West and new state organizations bidding for immigrants, both foreign and native, added weight to the democratic doctrine which was bearing down irresistibly upon the East. White manhood suffrage was the modern ideal, and the typical rough westerner could look down with contemptuous disdain, equal to that of the aristocrat himself, upon any men who were so far lost in the past as to speak of serious restrictions upon the new ideal. In the East itself and the near West the growth of cities and an industrial class that possessed no land added to the number who had no patience with the old restrictions. The question had almost passed the stage of argument, and it was only in places like Rhode Island, Pennsylvania, and Virginia that the populace lacked means to gain its end. It was merely a matter of a little time even in these strongholds, for not even the closed corporation, the restricted electorate, could stand out forever.

The new spirit, or the manifestation of the old spirit in new and violent forms, found expression for the most part in new constitutions in old states and remodeling of old constitutions, for during the thirties only two more states found their way into the Union. Arkansas appeared in 1836 with a constitution innocent of all restrictions. White male citizens resident in the state for six months were all welcome at the polls. Soldiers and sailors were excluded, but they alone. Michigan in 1835 had a constitution that was identical to that of Arkansas in its suffrage provisions. The geographical location of Arkansas forestalled any considerable debate on the free-negro question, and foreigners did not go as far south as Arkansas in any great numbers. But both the negro question and foreign suffrage could trouble Michigan, and did at no far-distant time.

Delaware provided herself with a new constitution in 1831, but the electorate was not enlarged thereby. It will be remembered that Delaware demanded the payment of a state or county tax. The requirement was perpetuated in the new constitution, and Delaware proved to be one of the last places where the vestiges of property restriction were able to hold out awhile longer. On the other hand Mississippi found occasion to throw aside a similar restriction the following year, and her new constitution admitted all white male citizens after a year of residence. It will be readily understood how the little states on the Atlantic seaboard were better able to withstand democratic influences. There was no new territory to be taken up to accommodate great colonies of pioneers. The population could not grow rapidly except in the few industrial centers, and the old

population was conservative. Rhode Island and Delaware were much alike in this regard, and it was not until the industrial element threatened revolution that restrictions on the suffrage gave way in Rhode Island. In the West they were ignored in natural, peaceable fashion. When Tennessee came to make a new constitution in 1834 the old property qualification was abandoned as if by common consent and with scarcely a struggle. Very early in the convention a resolution was introduced suggesting that no property qualification should be established, and that, apparently, ended the matter. Tennessee had a large share of what has been called "the region of small farms and household industry,"[1] which accounts for the matter-of-fact abandonment of the old-time tests. In states of the West the relics of conservatism were simply dropped, almost without a thought, as soon as a really representative assembly could get together. But if the property and taxpaying qualification was taking care of itself and dying a natural death, the free-negro problem was still stirring up considerable trouble, especially in the border states.

In this same Tennessee convention the negro question received a great deal of attention. The first draft of a suffrage clause for the new constitution presented to the convention proposed full manhood suffrage—not excluding free negroes. The outstanding arguments offered in favor of admitting the negro to the suffrage were two in number, and both of them were decidedly materialistic. It was said in the first place that the negro did

[1] W. A. Schaper, *Sectionalism and Representation in South Carolina*, p. 427: "It was the undeveloped back country—the region of small farms and household industry—that stamped its ideals on the life of the nation."

military service, and in the second place that he paid taxes. The idea of expediency was completely lost sight of. Nobody argued that it was for the best interests of the state that free negroes should be admitted to the polls, although here and there a word was said about the negro having a natural right to participate. For the most part the ballot was looked upon as a sort of compensation for doing service for the state. Men always had trouble, even in the case of white people only, in harmonizing military service and exclusion from the suffrage. It never seemed right that a person should fight for his native land and not be permitted a voice in its management. This had been a stumbling-block in connection with the veterans of 1812 in states where a property test prevailed, and again it was a problem here, even twenty years after the war. And now it came up in connection with the negro. As usual a compromise was sought and found. It was suggested in a resolution that the right of suffrage be taken from free colored persons and that they be exempted from military service. And another resolution aimed to exempt them from poll taxes. These compromising steps met with considerable favor. Of course they were nothing but a bribe that served to relieve the dissatisfaction at being excluded from the suffrage and also served to satisfy the scruples of those who were impressed with the injustice of any other terms of exclusion. It was indeed necessary to make some concessions to those defending the rights of the free negro, for the convention was not all of one mind in the matter.[1]

[1] Even in this convention a resolution was presented to exempt boys under twenty-one from service in order to escape the inconsistency of the situation (Tenn. Conv., 1834, *Journal*, p. 34).

It is interesting to note the decided reluctance to rely upon pure expediency arguments. As said before, the defenders of the negro for the most part based their arguments on materialistic considerations. The opposition devoted itself largely to discrediting or belittling these arguments and wasted a vast amount of time and energy on philosophical discussions dealing with the social compact and natural rights.[1] The scrupulous conscience could much more easily reconcile itself to the disagreeable task of excluding a free, taxpaying negro from the polls after listening to a verbose dissertation to the effect that his ancestors had not participated in a mythological social compact than if it merely were declared that under the existing circumstances it was decidedly to the best interests of the state in general to exclude the negro for the time being at least. That sounded too blunt altogether. And thus cracker-box philosophy was exploited to salve disturbed consciences, and it was found to be more and more popular as the negro question pressed more insistently.

In North Carolina the following year, 1855, the same problem was in evidence. Previous to this time there had been nothing in the constitution to prevent the negro from exercising the right of suffrage. This was a rare situation in the South, but it is said on good authority that practically none of the black race was suffered to attend the polls.[2] Where the law was

[1] Resolution presented by Mr. Marr and defended at great length: "That free persons of color, including mulattoes, mustees, and Indians, were not parties to our political compact, nor were they represented in the convention which framed the evidence of the compact, under which the free people of the state and of the United States are associated for civil government."—Tenn. Conv., 1834, *Journal*, p. 107.

[2] Weeks, *Political Science Quarterly*, IX, 675.

lax public opinion filled the breach, and negroes for the most part were sufficiently content with their freedom and kept away from the polls. Virginia provided a good illustration. The constitution of 1830 did not exclude them in terms, and in fact this was not done until 1864, yet the same authority declares that "negroes never voted in Virginia in the period from the Revolution to the Civil War." It therefore required some boldness for delegates to press the cause of free negroes.

The first committee report in the North Carolina convention excluded negroes and mulattoes within four degrees. The social inferiority of the negro was much stressed. It was said that public sentiment would inevitably exclude him from most of the important activities of social and political life and that it was foolish to attempt to bring about a situation of equality by law that could not exist in fact. It was recognized that free negroes were in a peculiarly difficult position. They were a sort of buffer between the whites and the slaves. Some looked upon this group as a mongrel, outcast, nondescript lot that were eminently undesirable, while others looked upon them as a link between the other two groups, through whom more satisfactory and sympathetic relationships could be developed. The number of free negroes was by no means inconsiderable in this part of the country. To a certain extent negroes were being freed by their masters as the sentiment against slavery developed, and this very situation contained a menace, said some, for if the free negroes were permitted to vote, their ex-masters would have such a

strong influence over them as to control the suffrage to their own ends.[1]

Compromises were introduced in the North Carolina convention as elsewhere. Whereas in some other states compensating benefits were conferred in repayment for exclusion, in North Carolina the compromises took a different form. It was suggested that additional qualifications be exacted of the negro in order that he might vote. Two hundred and fifty dollars' worth of property was suggested by some; others thought that if a negro had never been convicted of any misdemeanor or crime he should be permitted to vote. But such halfway measures derogated from the principle involved and really failed to satisfy either side. It was declared that if these qualifications were appropriate at all they should be applied to all men, and most of those who opposed the negro suffrage could not be moved by additional qualifications that really had nothing to do with the negro as a negro.

The taxation-without-representation argument was introduced briefly, but the convention met it with some impatience. These old-time arguments, relics of Revolutionary days, always have been exploited, and it is interesting to note how irritating they were, for as the science of politics developed and new situations appeared men saw how utterly impossible it was to carry out the doctrines to their logical conclusion. It would mean that every individual who paid a tax should vote, that

[1] Yet it is hardly credible that the type of men who set their slaves free (philanthropists, humanitarians, Quakers, etc.) were the sort to indulge in corrupt politics or exploit the race they emancipated.

all who were governed should have opportunity to consent or dissent, etc. But the phrases had a charming sound until they worked like boomerangs, and then they stirred up disagreeable doubts and were dreadfully annoying.

The North Carolina convention finally decided to exclude the negro completely and not even let him in under the various compromises that were suggested. It was a very close decision, sixty-four to fifty-five.[1] If what has been said by certain writers be quite true, that negroes as a matter of fact did not exercise the suffrage even when it was not forbidden them, it is rather difficult to understand why so much attention should be given to the question. It would seem that public sentiment was decidedly against their voting, and yet their cause was ably supported by a considerable number in the convention. It indicates that the question was largely one of principle.

This year did not witness the complete abandonment of the property qualification in North Carolina. It was still made necessary to possess fifty acres of land in order to vote for senators. The old aristocratic element was still able to hold a remaining vestige of their special privilege. It was on the wane, of course, and this is one of the exceedingly rare cases where they were able to avoid the last final step and make the last exit in two steps, as it were. Since 1776 it has very seldom happened that suffrage qualifications have differed for any public offices.

In tracing out the story of the suffrage a year or two later, Pennsylvania looms up large, for in 1837 a

[1] N.C. Conv., 1834–35, *Debates*, p. 351.

convention was held in that state, the records of which filled more than a dozen large volumes, in which the suffrage question fills its share of pages. The property interests made a tremendous effort to "come back," as the saying is, but they were only able to cling to the tax-paying requirement; the hot debate which bade fair to lead either side to victory concerned the right of the free negro to vote. A new tone was struck in this convention in connection with the negro problem. Heretofore it had been treated almost solely as a political problem; now the other phase of the question was presented with greater emphasis, and it was maintained that other than political considerations would inevitably determine the question despite any action the lawmakers might take. It was pointed out that public sentiment, even where the law was in doubt, arose above all law and the constitution and would keep the negro from the polls. It was very significant that men frequently asserted that to give the negro suffrage would be to imply a promise that could never be carried out. It implied an equality that race characteristics belied. The Indian could not be elevated—he died out; the negro could not be elevated——? They did not undertake to answer the question, and it has not been answered yet, but they stuck tenaciously to the proposition that he could not be elevated and should not be incorporated into the body politic. The prospect of negroes sitting in legislatures, in the jury box, on the bench, at the bar, in all the positions of respect and honor, repelled men with such force as to cause them to lose sight of all abstract political doctrine.

Up to about this time the negro had not been a serious problem, for he was not present in sufficient numbers even to threaten to exercise any great influence in the government. But the menace was growing. The slavery controversy was waxing hot; the abolitionists were carrying fiery brands wherever they went; in a word, the political situation over slavery was coming to a crucial point, and race prejudice was developing to a point it had never reached before. This race prejudice, or consciousness of racial distinction, was present in the Pennsylvania convention in a way that it was not in the earlier conventions. This accounts for the sort of argument outlined above. Arguments telling of the negro's rights and extolling his virtues and good qualities could have no effect. No matter what was said men were conscious of a distinction between the races which they viewed with jealousy and growing alarm, and all the old arguments pro and con fell upon deaf ears. From now on men were likely to vote from prejudice one way or the other.

Much opprobrium was heaped upon those who were said to vote against the negro simply because his skin was dark. But few men really did that; the dark skin was to them merely an outward indication of qualities which fostered the racial antipathy. But in the midst of this illogical prejudice it is satisfying to discover an argument based on expediency. One of the speakers in the convention pointed out that negroes had all the rights and privileges of citizenship and that it was not expedient to let them vote. They were no more discriminated against than were minors, women, and

non-taxpayers. The elective franchise should only be given to those through whom the peace and prosperity of society would be promoted.[1]

The defenders of the negro followed the usual line. One delegate struck a new chord when he opposed the exclusion of the negro because the basis of exclusion was a fact over which he had no control—his color. A suffrage qualification, said he, should be such that any man could attain it. A high property test, a taxpaying test, a long residence, age, literacy, were qualifications which a man could acquire, but race or color violated sound principles of democracy and left nothing to strive for; such men were hopelessly disfranchised.[2] This man invoked a new principle of democracy, but his principle would have included woman too, although no one thought of that. It merely shows how inevitably both sides were driven to decide the whole proposition on the issue of expediency.

It may be well to consider briefly the question as to whether the negroes as a group needed special representation. It has been characteristic of the political parties in this country since the breakdown of the Federalists in the early part of the nineteenth century that they have cut athwart all social and economic groups. There has been no labor party, no capitalist party, no religious party, no conservative or radical party. All parties have appealed to all classes, rich and poor, East and West. But the advent of the negro presented a very distinct group, and it was considered by some that such a group needed special representation that could not be attained

[1] Penn. Conv., 1837, *Debates*, IX, 348.

[2] *Ibid.*, p. 332.

through any existing parties. However, it is significant that, while the Republican party has claimed most of the negroes, there is no essential reason why they should not distribute themselves as the white men have done throughout the other parties. Fortunately no deliberate attempt was made to treat this group as deserving special representation, even though it was considered at this time.

Of course the usual compromises were suggested to let the negro in, but they were all repudiated, and the negro was denied the suffrage by a vote of seventy-seven to forty-five.[1] This denial of the suffrage to negroes gave rise to considerable opposition throughout the state, where the abolition movement was relatively strong. The action of Pennsylvania in excluding the negro marks a turning-point in the development of the negro-suffrage controversy. In a number of states negroes had not been excluded in the past and never were excluded. There were some other states which had not excluded negroes in the first place, but as time went on it was found desirable to do so. Pennsylvania was the last of these states.[2] From this time on the actual negro-suffrage situation did not change until the Fourteenth Amendment was in effect. The other states not included in the two foregoing categories were either southern states where the negro did not vote, no matter what the law was, or else states which adopted exclusion of the negro from the beginning. This action of Pennsylvania, then, put an end to changes in the negro-suffrage situation until the Fourteenth Amendment was passed. There

[1] *Ibid.*, X, 106.

[2] New York did this in 1846, but it was defeated on referendum.

were only six states where the negro could vote, and they were in New England.[1]

The position of the negro was settled until the war. There was considerable debate in the conventions which followed, and the negroes did not lack champions. But in spite of further argument and disputation his case was settled and no more changes were made. Property and taxpaying qualifications too had almost gone down to defeat. One of the last struggles was staged in the Pennsylvania convention of 1837. It is surprising that such a strong element appeared in advocacy of a property test. The old constitution provided that one must have paid a state or county tax in order to vote, and while there was no chance of reverting to a property test there was plenty of argument presented which looked toward such reaction. There were also a great many who would not consider a property test but were determined not to go farther than a taxpaying qualification, and around this proposition the debate centered. Once again the old slogan about taxation and representation was worked backward to the confusion of the

[1] The situation is well summarized by Weeks, *Pol. Sci. Quar.*, X, 677.

Never Excluded Negro	Altered Constitution to Exclude Negroes	Southern States	Negro Always Excluded by Law
Maine	Delaware, 1792	Alabama	California
Massachusetts	Kentucky, 1799	Arkansas	Colorado
New Hampshire	Maryland, 1809	Florida	Illinois
New York	Connecticut, 1818	Georgia	Indiana
Rhode Island	New Jersey, 1820	Louisiana	Iowa
Vermont	Pennsylvania, 1838	Mississippi	Kansas
		North Carolina	Michigan
		South Carolina	Minnesota
		Tennessee	Missouri
		Texas	Nebraska
		Virginia	Nevada
			Ohio
			Oregon
			Utah
			Wisconsin

radicals.[1] The old favorite arguments invariably got their advocates into trouble.

A tax qualification, it was presumed, would keep the most undesirable element from the polls, but in order to make it as low as possible it was sought to have state, federal, county, city, borough, road, and militia taxes included. Then nearly every man could qualify under one or the other. It was pointed out that circumstances might transpire to put an end to county taxes, and that many who only qualified under them would find themselves disfranchised. The theory of a tax qualification simply assumed that by paying a tax the individual contributed to the support of the government and therefore was entitled to participate in its management. The weakness of this theory was not pointed out, namely, that an industrious worker who really produced wealth might well contribute vastly more to the ultimate support of the state, even though he paid no tax, than the idle person who did pay taxes. But political economy was an undeveloped science.

There were some who opposed the tying up of suffrage to a taxpaying test because it virtually left the matter in the hands of the legislature. That body could impose a relatively high tax or, on the other hand, could establish

[1] Penn. Conv., 1837, *Debates*, III, 121. This delegate was shocked "to hear it maintained that the tax qualification was an exercise of arbitrary and tyrannical authority on the part of the state government. Why, Sir, it was on this principle—that taxation and representation are inseparable—that our Revolution was founded. It was from that abstract principle that it arose—for no one ever pretended that the tax was an onerous one. I would not suppose there is a majority here ready to put a stigma on the principle which our fathers asserted so strenuously and at so much peril, and which they laid at the very foundation of the free institutions which they established."

an exceedingly low tax, which would be no obstacle at all. Indeed it seems that thousands of men already exercised the franchise in virtue of paying ten cents a year in taxes. In such a state of affairs the theory of a tax qualification might be satisfied, but it did not keep away the undesirable element which was so greatly despised by the aristocracy.[1] Quite a large number voted for the tax qualification as a choice of evils. They could not get a free suffrage and hence accepted a simple tax requirement which by means of suitable legislation could be reduced to a minimum.

The oratorical denunciation of those who did not pay taxes was resented with considerable heat. The poor laboring man and artisan did not relish being called an "Arab" or a "vagabond," and the virtues of the working people were extolled at great length. It was pointed out how valuable they were in time of national peril. The vision of impecunious war veterans was conjured up, and the duty the state owed the helpless worker was much stressed. The poor man feared exploitation by the propertied class. A vast amount of oratory was expended on the topic of natural right[2] and the revolu-

[1] A typical aristocrat spoke thus: "But, Sir, what does the delegate propose? To place the vicious vagrant, the wandering Arabs, the Tartar hordes of our large cities on a level with the virtuous and good man? . . . . These Arabs steeped in crime and in vice, to be placed on a level with the industrious population is insulting and degrading to the community. . . . . I hold up my hands against a proceeding which confers on the idle, vicious, degraded vagabond a right at the expense of the poor and industrious portion of this commonwealth."—Penn. Conv., 1837, *Debates*, II, 487.

[2] The temptation to quote this ebullition as a curiosity cannot be overcome: "By suffrage I apprehend is meant, in its most enlarged sense, that expression of will by which man signifies his disposition to enter into the social compact—and to institute government. It is by

tionary philosophy, but the upshot was the retention of the old suffrage clause requiring that the voter must have paid a state or county tax. In view of the fact that a tax as low as ten or twenty-five cents might be imposed to satisfy the requirement, there was not much to object to except the principle. The vote on the taxpaying requirement was very close, fifty-five to fifty-two, and that shows how the debate happened to be so prolonged.

It may be said in passing, just as a reminder of some of the other problems that suffrage clauses usually dealt with, that this constitution failed to exclude any groups, such as paupers, criminals, students, etc. The question of paupers had been brought up, but of course the taxpaying qualification was presumed to cover their case. The residence requirement was placed at one year in the state and ten days in the voting precinct.

In Rhode Island the demand for abolition of property qualifications for suffrage ultimately led to a small-sized revolution. This state has been mentioned several times as being particularly well fortified against the progressive movements of the day. But it seems that the longer the conservatives succeeded in staving off the day of reckoning the harder they were destined to fall. Only a complete surrender to the popular demands saved

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that also that he manifests his assent or dissent to the measures of that government. It is evidently then a natural and inherent right, and not at any time surrendered; for by the exercise of it alone, can a man pass from a state of nature into the social compact. If a natural right then, so precious is its nature, that the humblest man in the community cannot be divested of it. Forfeited it may be by crime, and other circumstances, but taken from him never without violence and injustice." How serenely he passes over the case of minors twenty years of age, and women!

bloodshed, and if the people of Rhode Island did have to wait until 1843 to get the franchise without impediments, it is worth noting that the step from a real estate to no kind of property qualification was made in about as quick time as it took to write it down. There was no dillydallying through the various stages of personal-property alternatives. The disorder resulting in this sudden change is known to history as the Dorr Rebellion of 1841.

Rhode Island had never provided herself with a modern constitution such as the other states possessed. Rhode Island always seemed to take pride in being eccentric, and it pleased her public men to say that their state was operating satisfactorily under the ancient charter granted by Charles II in 1663. It seems that this antiquity was supposed to lend a certain prestige to the state which the nineteenth-century generation of Democrats failed to appreciate. The charter provided a property in real estate qualification for the suffrage. It did not excite much opposition until the Jeffersonian movement was at its height. For a time the Republicans or Antifederalists were in power, and steps were taken looking toward a cutting down of the suffrage qualification.[1] Had those who worked for such a move been successful, in all probability a taxpaying alternative would have been provided and Rhode Island would have illustrated the same gradual tendency that was observable in other states. But the remnant of Federalists got back in power before the step was accomplished, and nothing was done. This happened in 1811.

Rhode Island naturally became a manufacturing state and thousands of workers flocked into the cities.

[1] J. Frieze, *Concise History of Suffrage in Rhode Island*, p. 17.

They formed a malcontent group that was continually grumbling against repression; but the property interests were firmly intrenched back of their hoary charter, and the democratic element could not pry its way into the "closed corporation." Suffrage was being extended in all the states surrounding them, as has been seen. And there was no lack of agitation in Rhode Island either. Scarcely ten years elapsed from the time of the former effort when in the early twenties a proposition for a new constitution was put before the electorate and failed of adoption.[1] This was quite to be expected, for those who exercised the franchise were satisfied, and the malcontent group was not able yet to awe them. The governing class here was particularly arrogant and supercilious.

In 1829 bold demands were made upon the assembly to make some move toward establishing a more democratic government.[2] But these demands only provoked the most amazing declarations against democratic principles. One would have thought that this assembly had never heard of the Declaration of Independence or the United States of America, and that King Charles had graciously blessed them with his charter, perhaps the year before. Democracy was roundly denounced and the freehold qualification stoutly supported.

It was about this time that one Thomas Dorr appeared upon the scene. He was a man of education and good family and seemed ready to give his entire energy to the cause of broader suffrage. He assumed the leadership of suffrage advocates and in May, 1833, organized a party for the purpose of carrying on a

[1] McMaster, *History of the People of the United States*, VII, 165.

[2] *Ibid.*, p. 166.

systematic propaganda for a taxpaying suffrage clause.[1] This is significant. Dorr and his followers did not want full suffrage. What they wanted at this time was a taxpaying qualification only. The party consisted of mechanics and workingmen for the most part, that is, the best of these, the sort who paid some taxes but did not own real estate. They held regular meetings in the town house at Providence and discussed the suffrage question. The occasions were not without picturesque interest, for the speakers and prominent leaders, wishing to emphasize the plebeian character of the organization, always appeared in rough clothing and assumed rude manners. They wrote messages to state and national dignitaries and would sign their names: "John Jones, carpenter"; "William Smith, shoemaker"; "George Clark, blacksmith," etc. They were as proud of being plebes as the aristocrats were of being protégés of the beloved King Charles.

These activities resulted in a constitutional convention being called by the assembly in 1834. But delegates were to have no pay, which shut out the poor man even if he could have been elected, and the whole affair was looked upon as a sop to Cerberus rather than an honest attempt to satisfy popular clamor. The convention was a farce, and after a few desultory meetings broke up without accomplishing anything. Dorr's organization of workingmen seems to have become discouraged, and in 1837 the cause of suffrage was at a very low ebb, for the party then died out.[2]

However, during the log-cabin, hard-cider campaign of 1840 the democratic spirit in Rhode Island was

[1] Frieze, *op. cit.*, p. 23. [2] *Ibid.*, p. 26.

revived, and some interested persons issued a pamphlet entitled *An Address to the Citizens of Rhode Island Who Are Denied the Right of Suffrage.* This pamphlet suggested the calling of another constitutional convention. The Rhode Island Suffrage Association was formed by Thomas Dorr and issued as its publicity organ the *New Age.* It is noteworthy that this Suffrage Association was not in favor of a liberal program even for its own time. It opposed suffrage for naturalized citizens, it opposed negro suffrage, and it wanted a taxpaying requirement. But it had started something that it was not able to stop.

The assembly remembered the success with which it had met the situation in 1834 and offered to call another convention. But the democrats were not to be fooled a second time and said that they would deal with the situation without any help from the assembly. The movement was carried on through the winter of 1840–41 with great enthusiasm. The properly constituted authorities were completely ignored, and the movement rapidly assumed a revolutionary aspect.

In April, 1841, a huge mass meeting was held in Providence to start the machinery for calling a constitutional convention. The meeting was a great success. Such sentiments as these expressed the dominant thought: "Worth Makes the Man, but Sand and Gravel Make the Voter"; "Virtue, Patriotism, and Intelligence vs. $134.00 Worth of Dirt." On the whole it was an ominous demonstration.[1] The assembly was alarmed and promised to call a legitimate convention that would represent the people fairly. But the leaders of the

[1] McMaster, *op. cit.*, VII, 168.

revolutionary movement had no more faith in the assembly. Of course the revolutionists had no legal right whatever to provide for a constitutional convention, and everything they did was entirely extra-legal.

They called a convention, however, which was known as the "People's Convention," and this convention drew up what they called a "People's Constitution." The assembly, hoping to forestall trouble, also called a convention which had a legal status.

These conventions assembled about the same time, in the fall of 1841. Many of the more conservative men in Dorr's party wanted to wait and see what the legitimate convention would do. But they were not able to stem the impetuous determination of the revolutionists, who offered their People's Constitution to the electorate while the legitimate convention was having a recess. It was approved by an overwhelming majority at the polls. This constitution embraced a much more liberal program than had at first been intended. Every white male citizen of the United States was to have the franchise after a residence of one year in the state and six months in the town.

The legitimate convention hastened to reassemble and promptly drew up a constitution, known as the "Landholder's Constitution," which was surprisingly liberal. It was provided that every white male *native* citizen of the United States could vote if he possessed one hundred and thirty-four dollars' worth of property and had lived in the state one year. If he had lived in the state two years the property requirement was not to apply. Foreigners must have lived in the state three years after naturalization and in any event satisfy the

property requirement. This was certainly liberal enough to have caused the end of the revolution. There is no doubt at all that the extra year of residence would soon have been taken off, and the disabilities against foreigners ought not to have offended the original suffrage leaders, for they favored such measures themselves. But Dorr and his crowd were angry. They did not want anybody to spoil their revolution, and as a result of their agitation the Landholder's Constitution was defeated on March 1, 1842. The suffrage leaders had refused to accept the equivalent of their own program when it came through a legitimate channel.

Dorr now declared that the People's Constitution was legally in force and proposed to set up a government under that constitution. Of course such a proceeding was absolutely illegal, but a government was organized nevertheless. The legitimate government was very slow to oppose any of Dorr's activities. He had been elected governor under the People's Constitution and pretended to act as governor. On May 18 he undertook to seize the arsenal as a first step in his warlike program of ousting the legitimate government and establishing his own. He had a goodly following and marched up to the arsenal boldly enough. He ordered the defenders to surrender, which they refused to do. He had brought an old cannon with him and now ordered the men to shoot it. But, as has been well said, "The men who followed Mr. Dorr to the field, it appeared, had not gone there to fight, but to witness the fulfilment of his prediction that the arsenal would be surrendered without firing a gun."[1] He tried to fire the cannon himself, but

[1] Frieze, *op. cit.*, p. 81.

it would not go off. The attack was then given up for the time being. The government treated the affair with great indulgence. Dorr was permitted to escape from the state, but a month later he returned and issued various proclamations as governor of Rhode Island, calling the people to arms. The legitimate assembly now prepared in earnest to put an end to his nonsense. On June 25 the city was under martial law and a considerable force was under arms. They were well organized and proceeded to surround Dorr and his force.

On the evening of the twenty-seventh Dorr unexpectedly fled, deserting his followers and leaving a note saying that evidently those who voted for the People's Constitution were not willing to fight for it. He advised his followers to disperse. This was the end of the Dorr Rebellion. Only one man had been killed in the whole affray, and that happened in a disorderly mob. Dorr was later captured, tried, sentenced to life imprisonment, and the next year set at liberty by the legislature upon which he had made war.

In the meantime a constitutional convention had been called, the delegates to which were to be elected by native males who had lived in the state three years. This provision was noticeable for not discriminating against negroes. It is quite evident that at last the assembly had come to a point where it was willing to go to almost any limits to satisfy the popular clamor. The Dorr Rebellion is a landmark. It was by far the biggest, most dramatic, and most determined attack upon property qualifications that had ever occurred, and it was practically the last struggle that was necessary to break the hold of property qualifications for good. The

only incident in the history of suffrage in the United States that can eclipse this in importance is the passage of the Fourteenth Amendment.

The Dorr Rebellion had really assumed national significance and was supported by Democrats all over the United States. The president had been asked to support the legitimate government with federal troops, but public sentiment restrained him until the last moment. There is no doubt that the movement had the full, whole-hearted sympathy of the entire nation. If Dorr had only accepted the advances of the legitimate government in Rhode Island and had not clung to his foolish, illegal project after the real aim had been accomplished, the incident would not suffer the opprobrium with which it must now be stigmatized. The Rebellion had collapsed for want of a real issue, but the leaders were too selfish to acknowledge the fact.

The modern constitution which was the ultimate outcome of this trouble was not put in force until 1843, and it embodied some unusual alternatives. Native citizens of the United States who had paid a tax of not less than one dollar or had done military service could vote after satisfying a two-year-residence requirement. If a man owned one hundred and thirty-four dollars' worth of property, or property yielding seven dollars annual income, he could vote after living in the state one year. The taxpaying requirement amounted to nothing but a registry tax of one dollar, but to the conservative element it was only a slight measure of consolation. It is to be noted that naturalized citizens could not escape the property test and that there was no discrimination against negroes. This constitution

was not as liberal as the so-called Landholder's Constitution that had been repudiated by the suffrage advocates, but they were not disturbed over the matter. A majority of the population was quite ready to put disabilities upon the foreigner, and the one-dollar tax was not particularly offensive.

Indians were excluded from the suffrage, as were also sailors, soldiers, the insane, and paupers; infamous crimes, bribery in particular, were to be cause for exclusion. On the whole this constitution had a very comprehensive suffrage clause.

Another little state of the North Atlantic seaboard group provided herself with a new constitution in 1844, in which the property qualification was left out. New Jersey had a fifty-pound property requirement in her former constitution, but in this one it is gone, and there is not even a taxpaying test left in memory of it. White male citizens of the United States, born or naturalized, who lived one year in the state and five months in the county were enfranchised. Soldiers and sailors, the insane, and paupers were excluded, and the commission of an infamous crime or bribery was cause for disfranchisement.

An attempt had been made in convention to put special disability on the foreigners. A measure was proposed which would oblige naturalized citizens to reside in the state one year after naturalization before they could vote, but it was defeated thirty-five to fourteen.[1] Foreigners in the industrial centers along the North Atlantic coast were making themselves particularly obnoxious. Especially was this true of the illiterate

[1] N.J. Conv., 1844, *Journal*, p. 97.

Irishman. An educational test was proposed for his benefit, but unfortunately it was found to embrace too many native citizens. The proposal was that no one should vote unless he could read the English language, but it was overwhelmingly defeated. The activity of foreigners in election had always exasperated the New Englanders and the conservatives of New York and Pennsylvania. But when it came to the point of deliberately excluding the naturalized citizen from the polls the American sense of democracy and justice could not countenance any such move. There was a great deal of bluster and denunciation of foreigners, but conventions usually stopped short of penalizing them after they were naturalized.

The following year Louisiana was also wrestling with the foreigner problem. Some proposed to put the restrictions relatively high, suggesting a residence period of four years after naturalization. There were various types of foreigners that caused trouble, and Louisiana had maintained two institutions with which all foreigners were not in sympathy. The first of these was slavery—most foreigners discountenanced slavery with great firmness. The other was the Roman Law. Louisiana is the only state in the Union which adopted the Roman Civil Law instead of the common-law system, and many statesmen were very jealous of the institution and feared to intrust its support to foreigners who might not be in sympathy with it. It was said on the floor of the convention that certain foreigners came to this country because they were suppressed and suffered greatly from monarchical institutions in Europe. These were inclined to treat the liberal institutions here with

great license, others were offended at slavery, and others were not familiar with the peculiar legal institutions. All of them, it was said, needed a long term of probation.[1]

Most of the conservatives who really wanted a property or taxpaying test, when they saw that there was no hope of securing either, turned their attention to the long-residence clause and gave it their hearty support. Early in the debate on suffrage various periods of residence were suggested for different classes. The man with property was to satisfy a test of only one year, he who paid taxes two years, and all others three years. It merely illustrates the resourcefulness of the property owners in seeking even a vestige of their former privileges. However, a great deal of sentimental argument was invoked against the high residence qualification for foreigners. Many references were made to the nobility of Lafayette and the generosity of the French during the American Revolution. They seemed perfectly willing to ignore less pleasant incidents in the relations of this country with France.

But all the talk against foreigners came to nothing, as was usually the case, and the high residence requirement of two years in the state and one in the parish was imposed upon all. There was no property or tax requirement. Only soldiers and sailors were excluded specifically, and penitentiary offenses were declared cause for disfranchisement. Louisiana was one of the last states to give up the conservative restrictions, and

[1] It may have been far-fetched to keep a man from voting because he was accustomed to the common law instead of the Roman Law. Most laymen and a great many lawyers do not know the difference. But the argument was used nevertheless, even as regarded emigrants from other states, not foreigners.

the adoption of its liberal constitution in 1845 is a significant turning-point in the development of suffrage.

However, a review of the situation at this date will reveal the fact that an uncompromising property qualification still remained in two states, North Carolina and Virginia.[1] These states were the stronghold of the southern aristocracy, if there was such a thing, and the democratic pioneers who opened up the West never went to these states, and neither did the noisy proletariat that was filling up the busy northern states. Being free of these two elements, Virginia had been able to withstand the democratic tendencies, but in 1850 a constitutional convention eliminated the property qualification without even leaving a taxpaying requirement.

The original committee report which was finally adopted admitted all white male citizens of the United States to the polls. A feeble attempt was made to introduce a taxpaying qualification, but it met with no success. There was more evidence of a desire to use the suffrage machinery as a club to force men to pay their legitimate taxes. A move was made designed to exclude

[1] A great many histories, books on political institutions, magazine articles, and the cyclopedias give summaries of the early suffrage qualifications and the dates when they were altered. The evidence of these writings frequently seems to conflict, and sometimes it is actually wrong, but there is some confusion as to what, for instance, a property test is. For example, a property qualification existed in Rhode Island after 1843, but there was an alternative by the side of it. Under certain circumstances one need not satisfy the property test. Hence it is decidedly misleading to say that a property test existed there—it did, but it amounted to little. The same situation existed in Louisiana between 1812 and 1844. It was the taxpaying qualification only that was significant. So in this work, when it is said that a property test applied, the implication is that there was no alternative. When an alternative appears, it is the alternative that is significant and not the property test.

from the polls all who were returned as delinquent. Quite a number of resolutions were presented with this in view. It exhibits a rather unfortunate tendency to warp the suffrage laws away from their proper function. Machinery for the collection of delinquent taxes ought to be adequate without exploiting the suffrage clause. The implication is conveyed that if a man be willing to forego his vote he may neglect to pay his taxes.

This convention interested itself with the foreigner problem. There was no thought of giving the franchise to unnaturalized foreigners, but the committee was instructed to consider the advisability of imposing special disabilities upon those who had become naturalized, such as extra years of residence, or the taking of special oaths. The convention favored the application of a special oath of allegiance to the state of Virginia. No higher residence requirement was exacted, but two years in the state was demanded of all. The usual disabilities were also put on soldiers, sailors, the insane, and criminals.

North Carolina has the distinction of being the last state in the Union to abandon the unmitigated property test. It was done in 1850. Previous to this time one must have owned property in order to vote in North Carolina. A taxpaying requirement was put in as a substitute.[1] The Dorr Rebellion marked the last real struggle against property privilege. There was no vigorous fight put up in either Virginia or North Carolina. From this time on property tests were a thing of the past

[1] Taxpaying qualifications, since the very early constitutions were written, do not name the amount but are simply stated in such terms as, "Shall have paid public taxes," or, "Shall have paid a state or county tax."

in the United States. They had clung tenaciously even past the halfway mark in the nineteenth century, and that fact itself is really surprising. It is also worthy of note that the property test was never found farther west than Tennessee, that being the only state outside the original thirteen where it was ever introduced. The taxpaying qualifications invaded some of the other states, but the property test without an alternative was never able to conquer new lands, with the exception of Tennessee, and required the greatest efforts of the leading statesmen of the country to make it possible to hang on so long in the original states.

The end of even taxpaying qualifications seemed to be in sight. They were to be found in only seven states, and even in those states they were so low as not to excite much opposition. The tax requirement had come to be looked upon merely as a registration fee, and in later constitutions it was treated as such. At other times one was not allowed to vote unless he had paid all taxes assessed against him, including the poll tax, and a poll tax was assessed on every man. Obviously such a requirement cannot be looked upon as a taxpaying requirement. The levy of a poll tax has nothing to do with suffrage, and it is unscientific legislation and poor political theory to tie it up with suffrage. It is a serious reflection upon the administration of law in a state if the poll tax cannot stand without being bolstered up with the suffrage clause.

But to return to the seven states.[1] Connecticut abolished her taxpaying requirement, which had been

[1] Connecticut, Delaware, Massachusetts, North Carolina, Ohio, Pennsylvania, and Rhode Island.

introduced in memory of the property qualification in 1818, by means of a constitutional amendment in 1845.[1] However, the lawmakers clung to their pious wish, which harmed nobody, and every voter must needs "sustain a good moral character."

Ohio dropped her tax requirement in her new constitution of 1851, and scarcely anyone paid any attention to its going. One scans the pages of the convention debates in vain to find any serious argument about it. The free negro was exciting trouble in Ohio at this time, and that subject received a great deal of attention. However, the situation was strained. Advocates of negro suffrage had much difficulty in getting their petitions accepted. Even petitions advocating the expulsion of all free negroes from the state had a better reception. The anti-negro element was at white heat, and it was really quite impossible to debate the question calmly. It has been intimated before that the free-negro question was really settled. By 1850 opinion had crystallized and there was in effect a deadlock. During a scant twenty years from 1820 to 1840 it had been possible to debate the free-negro cause dispassionately. But from 1840 until the war it was no longer possible. The introduction of the question in convention merely indicated the persistency of the negro-suffrage advocates.

In 1853 a convention was held in Massachusetts and the taxpaying qualification came in for thorough debate. As it was the last time the question was discussed on the basis of the old standards it may be worth while to give the arguments some attention, although not much that was new appeared. The history of suffrage in Massachusetts had been typical. There had first been real estate

[1] Compiled Stat. Conn., 1845, p. 49.

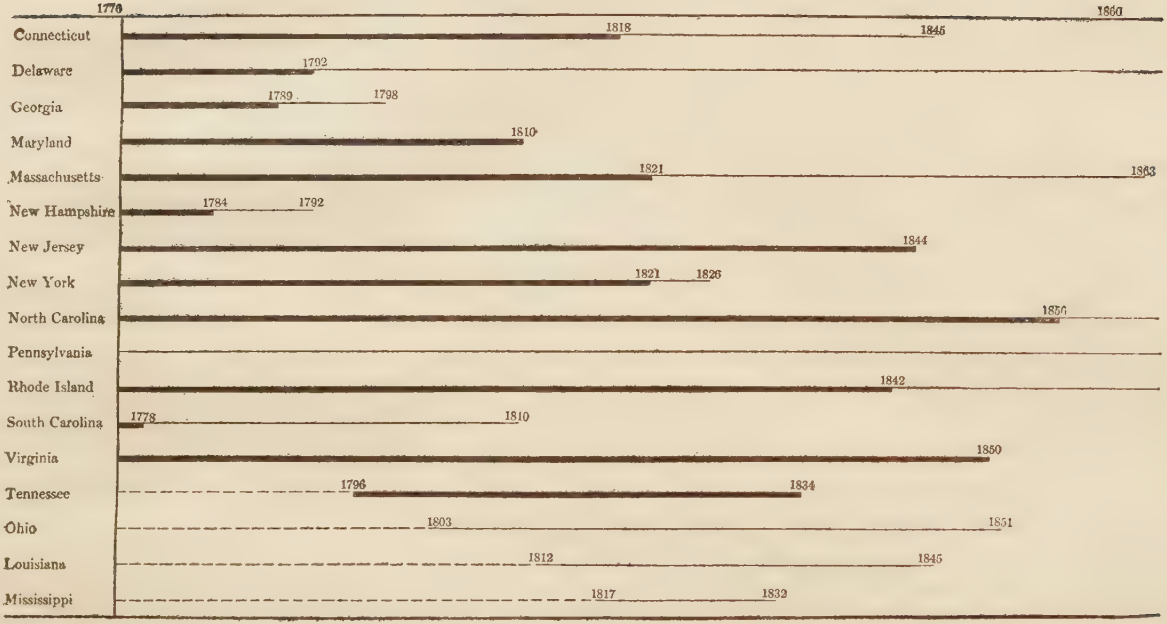
qualification, then the personalty alternative, then the substitution of taxpaying, and now even that was nearly worn out. The smallness of the tax was much dwelt upon. As it was only a dollar and a half, advocates thought that no objection should be made. But it was pointed out that whether or not the poor man could afford that small sum, or ought to afford it, he simply would not. It would seem to him like throwing money away, and he would prefer to lose his vote. This undoubtedly was true, and it was also true that the conservatives hoped that just that thing would happen.

It is unnecessary to review the old arguments. "All governments derive just powers from the consent of the governed. Non-taxpayers are part of the governed." "Men should be represented in government—not their dollars."[1] On the other hand, "Representation should only go with taxation"; "Those who pay for supporting the government should have the exclusive right to control it." All these and other arguments were of course exploited. And the never-failing natural-rights philosopher was also present.[2]

[1] Mass. Conv., 1853, *Debates*. A member said that he quoted Benjamin Franklin as follows: "You require that a man shall have sixty dollars' worth of property, or he shall not vote. Very well, take an illustration. Here is a man today who owns a jackass, and the jackass is worth sixty dollars. Today the man is a voter and he goes to the polls with his jackass and deposits his vote. Tomorrow the jackass dies. The next day the man comes to vote without his jackass and he cannot vote at all. Now tell me, which was the voter, the man or the jackass?" Fortunately, some one informed the gentleman that he was quoting Tom Paine and not the venerable Franklin.

[2] Mr. Simonds spoke thus: "You have no right to deprive him of this privilege. And I ask if it is not time that we should assert this declaration of the bill of rights, that this is a right which belongs to every man—a right which we can neither give nor take away from him?"

DURATION OF PROPERTY AND TAXPAYING QUALIFICATIONS



Heavy lines indicate duration of property qualification. Fine lines indicate duration of taxpaying qualification. Broken lines represent period prior to the states coming into the Union.

Vermont and Kentucky came into the Union in 1791 and 1792 respectively and Indiana in 1816, but without property or taxpaying qualifications. After Mississippi, in 1817, no state came in with a property or taxpaying qualification.

A strong effort was made to introduce a new sort of compromise. It was proposed to retain the taxpaying qualification for town meetings. Indeed it was remarkable that so many were willing to grant full suffrage for everything except town elections. They seemed not to care so much who voted for president and governor, but only the best men in the community should vote for hogreeve. It is a striking illustration of the reverence and jealousy men held for the time-honored town meetings. In the rural districts it was the most important thing in their lives.

The small-tax requirement hung on, however, for ten years longer and finally gave way in 1863. North Carolina abolished her requirement in 1868. That left Delaware, Pennsylvania, and Rhode Island. The first of these did not give it up until 1897, and it still holds in the other two states; but it must be remarked again that any kind of a tax requirement connected with suffrage since 1860 has been practically nothing but a registry fee, and several states accomplish the same end by requiring that men must pay their poll taxes before voting. The old-fashioned taxpaying test as a compromise with property qualifications was gone before the Civil War.

CHAPTER V

ALIENS AND THE SUFFRAGE

So far as the suffrage was concerned, the fifteen years preceding the Civil War were chiefly occupied with the foreigner problem in new aspects. There has been no period in the history of this country that has been entirely free of a suffrage issue. Up until 1820 radical Democrats had all they could do to break down the hold of the property interests. The presence of foreigners was a disturbing matter and occupied attention now and then, but to no considerable extent, and resentment against foreigners taking part in elections was more or less spasmodic, although it did modify the trend of development, as has been indicated. From 1820 to 1845 the foreigner was almost lost sight of in the suffrage debates which were so fully occupied with the free negro and the few property tests that remained. But the foreigner problem was growing all the time. Here and there a reference would be made to it in newspapers, occasional acrimonious comments would be dropped in conventions, it was touched upon in Congress, and farsighted men could easily tell that it would not be many years before the foreigner's political status would force itself as an issue upon the statesmen of the day. So it was in the later forties and succeeding years, after the other suffrage problems had been laid to rest, that conventions had to deal with the immigrant. The problem did not stay before the public eye for very long, and it never was as

serious as many people thought it was going to be. The really serious problem that arose during this period was the woman-suffrage question. This problem hardly got a fair start when both were swallowed up in the Civil War. The woman-suffrage issue emerged after the war, strong and pressing, to occupy the attention of the North. The South had to deal with its negroes. Thus it was in this brief period before the war that the foreigner had his day in the foreground, and some attention must be given to the questions he presented.

A novel situation had arisen. For the first time the alien found strong champions; for the first time he was really wanted in certain parts of the country, wanted so badly that inducements were held out to attract him. Up in the Great Lakes region—in Michigan, Indiana, Wisconsin, Illinois, and Minnesota—there were vast, uncultivated tracts of land awaiting exploitation. Most of these states had not been organized very many years and they were eager to grow, to develop their resources, increase their population and their wealth, gain larger representation in Congress, and become important units in the national government. What then could be more logical than to offer the swarming immigrants a hand in the government if they would only come? And a hand in the government meant the right of suffrage even before they were naturalized.

The economic interests of the undeveloped country certainly demanded the presence of foreign laborers,[1] and to offer them the elective franchise very soon after their arrival seemed to be an effective way of attracting them. Here was a problem: to reconcile this economic

[1] Von Holst, *History of the United States*, II, 524.

need of foreign labor with the native American, anti-Catholic prejudice that was being fanned.

Immigration was particularly heavy during 1846–48 and the immigrants consisted chiefly of Irish and Germans.[1] The influx of the Irish is said to have been due to famine in Ireland,[2] but whatever the cause they certainly came in a vast army. Most of the immigrants tended to settle in the big industrial centers of New York, Massachusetts, and Pennsylvania, but the call to the Great Lakes region was not unheard, especially when it told of political privilege and opportunities for economic independence. Germans were particularly wanted. They were good farmers, thrifty and substantial settlers. Most of the immigrants were hopelessly ignorant, but illiteracy did not have much to do with one's capacity to grow a field of wheat.

On the other hand, the belligerent Irish had been causing trouble for some time in the East. Their disorderly conduct was indignantly denounced on all sides.[3] Illiterate Irish Catholic hoodlums promoting a riot at the polls was a particularly offensive spectacle to conservative New Englanders. It is told how they beat respectable citizens, insulted public dignitaries, fought openly with the police, and raised havoc generally.[4] An election was considered an occasion for a

[1] Von Holst, *History of the United States*, II, 523.

[2] G. P. Garrison, *Westward Expansion*, p. 8.

[3] *Niles Register*, XLVIII (1835), 289, gives an account of a riotous incident and ends by saying that "they arrested many persons, such as Patrick O'Rourke, Tom Sullivan, Patrick Mulooney, Barney McCann—the police office was full of them." Many quotations from the newspapers are given, reciting accounts of the terrorism on the part of these immigrants.

[4] Schouler, *History of the United States*, IV, 202.

grand uproar. And, what was most alarming, they were building up a vast machine to be controlled by shrewd, unscrupulous politicians. This ignorant, brutal, vicious element lent itself admirably to the activities of a Tammany Hall. To combat the menace a very considerable number of people were ready to form a political party, and in September, 1847, a convention met in Philadelphia.[1] It was supposed to be a convention of the Native American party, later known as the "Know-Nothings." This convention recommended Zachary Taylor for president, although he was not formally put in nomination. Their principles were indicated in the party name they assumed. They wanted only native Americans to participate in the government and were particularly bitter against Irish Catholics. However, the members of this party were extremely reticent, and there is not as much information at hand concerning them as could be desired. They were called "Know-Nothings" because when questioned it was their habit to answer "I know nothing." At any rate the opposition to foreigners exercising the right of suffrage reached its highest point in this party, which maintained an organization until the Civil War.

Thus the situation stood in the later forties, the aliens massing themselves in the East but meeting bitter opposition, gradually shifting westward and finding a welcome and special privilege extended to them in the newer states. In 1846 a constitutional convention in New York is found casting opprobrium upon them. One of the first propositions brought forward proposed to abandon the universal practice of permitting the suffrage right to depend upon a law of Congress. Practically

[1] T. H. McKee, *Party Conventions.*

every state admitted to the polls citizens "born or naturalized." Therefore the right of an alien to vote was distinctly controlled by the power of Congress to pass naturalization laws. The idea was to get rid of this phrase and leave the state free to name the exact period of time an alien must live in the state before being permitted to vote.[1] Of course it was intended to require a much longer period for aliens than for natives. But this move did not meet with support.

The next scheme which occurred to the anti-alien group was to establish a literacy test, and this is the first time such a proposition was considered with any indication of possible success. The illiteracy of the invading Irishman was a particularly sore point, but naturally the great problem was so to frame a literacy test that ignorant Irishmen would be ruled out and ignorant natives would not. The entire history of the literacy test down to the present day has been characterized by this difficulty: how to exempt some special favorites from a perfectly impartial literacy test. The franchise committee reported in favor of a clause that would require every voter to be able to read and write English after 1855. A minority of the committee, seeking to exempt their special favorites, proposed that one who paid a tax should be relieved of the literacy test. But it seemed to be impossible to frame any kind of literacy test that would be acceptable to any considerable number of delegates. All sorts of compromises were urged concerning chiefly the date at which it should apply. First it was suggested that all born after the new constitution went into force should come under it,

[1] N.Y. Conv., 1846, *Journal*, p. 89.

and those living at the time being should never be affected. Then the year 1855 was proposed in order to get another vote on the issue, then 1860. But they all failed. The illiterate foreigner was heartily disliked, but the convention could not come to the point of putting special disabilities on him, once he became a citizen, and they were not willing to penalize any native Americans for the sake of ruling out the foreigners. So the program of exclusion had to be given up.

While the negro question is presumably disposed of until after the Civil War it would never do to pass by this convention without a mention of what was done there on behalf of the negro. A strong fight was made to relieve him of the two-hundred-and-fifty-dollar property requirement under which he was laboring.[1] Compromises were suggested—for example, let it not apply to negroes coming into the state thereafter; let it not apply to those already in the state but to the newcomers; let it not apply after a certain date. There were numerous alternatives, but nothing could move the convention. After flatly refusing to extend the franchise, by a vote of sixty-three to thirty-seven it acted upon the recommendation of the franchise committee, drew up a suffrage clause for negroes, and submitted the question to a popular referendum. The clause adopted by the convention provided that negroes must satisfy a three-year-residence requirement, own two hundred and fifty dollars' worth of property, and pay taxes.[2]

[1] *Ibid.*, p. 1247.

[2] There were three popular referendums on negro suffrage, 1846, 1850, and 1867, at all of which equal rights for the negro were defeated. It was not until 1874 that the negro-suffrage clause adopted by this convention was finally abandoned.

Elsewhere in the East constitutional alterations were going on too. In Maryland a convention drew up a new constitution in 1850. Much apprehension was manifest concerning the treatment that was to be awarded the foreigner, and numerous petitions suggesting literacy tests and long-residence periods testify to the fact that not a few were willing to impose severe restrictions upon him. But nothing radical was done, and the suffrage clause of the constitution of 1851 admitted all free white males after a residence of one year in the state and six months in the county.

In Connecticut, on the other hand, a constitutional amendment was passed in 1855 prescribing that ability to read the constitution or statutes should be a requirement for exercising the right of suffrage.[1] There is no doubt that this was aimed directly at the foreigners, although natives must have come under it also.

In Massachusetts there was an even more determined effort to get rid of the foreigner, and more elaborate steps were taken there than anywhere else. In 1857 an amendment to the constitution was passed requiring that all voters must be able to read the constitution and write their own names. And in order to pacify a certain portion of the native element that would find such a test prohibitive it was not to apply to anyone over sixty years of age or to anyone who already exercised the franchise. Two years later another amendment was passed requiring foreigners to remain in the state for two years after naturalization before they could vote. This seems to mark the highest point in the opposition to aliens, and it is worth noting that it was the ignorant, poverty-

[1] Gen. Stat. Conn., 1888, Art. 11.

stricken, famished, unwashed Irish Catholic rowdy whom the country may thank for bringing forth literacy tests. They were applied freely to the negro in future years and today are being used on general principles, but they originated practically for the benefit of the Irishman.

In the meantime the states clustering around Lake Michigan were holding out the hand of welcome to the foreigner. Wisconsin had joined the Union in 1848, and her constitution permitted aliens to vote after they had declared their intention to become citizens of the United States. Wisconsin was the first state to come into the Union with such an unusual provision, and the implications were not at once appreciated. It will be recalled that the Naturalization Law of the United States required that an alien should live in the country five years before he could become naturalized, and that at least two years before the date of his naturalization he must file a statement declaring it to be his intention to become a citizen of the United States. The fact must be fully understood that the filing of this statement in no way obligated the alien to do anything. He might file such a declaration at any time after his arrival in this country, and he might never appear again to complete his naturalization. Filing the declaration is not a halfway step in any sense of the word, as many seemed to believe. The alien remains an alien until he becomes a fully naturalized citizen. The filing of a declaration of intention is only a simple formality that imposes no obligation and confers only the very narrowly circumscribed right to seek naturalization after the five-year period of residence is completed. The alien is still an

alien in every sense of the word until he is naturalized, and his declaration of intention does not make him partially naturalized. Obviously the whole purpose of requiring the declaration of intention at all is to have some evidence that the individual is not acting on the spur of the moment or from thoughtless motives, but has entertained a fixed desire for at least two years to become a United States citizen.

Men who favored admitting aliens to the suffrage after they had declared their intention labored under all sorts of delusions.[1] Some believed that when a man had declared his intention he was half-naturalized and automatically became a full citizen two years later. Others misunderstood the law and thought that an alien must live in the country two years before he could declare his intention. Others actually seemed to think that declaring intention was equivalent to naturalization. Of course those who carried the liberal suffrage measures through were not so ill informed as this, but many who supported them were. The popular mind has never looked upon the alien who has declared his intention as quite so much of an alien as the one who has not, though strictly speaking their status is exactly the same. The one merely has a presumptive right to change his status at the end of a certain period if he wants to.

So here was Wisconsin admitting the subjects of the British king and the king of Prussia to the ballot box to help elect a president of the United States. The rest of the country was helpless. The federal Constitution says that the legislature of each state may determine how the presidential electors shall be selected, and those

[1] Wis. Conv., 1846, *Journal*, p. 419.

who vote for congressmen in each state need have only the qualifications necessary to vote for the members of the most numerous branch of the state legislature. Therefore Wisconsin was free to permit aliens to vote for presidential electors and congressmen even though they might be alien enemies. Although the situation has always been anomalous, it has been unquestionably constitutional.[1] There is no opportunity to raise an issue at all.

There was apparently no opposition whatever in the Wisconsin convention to admitting aliens in this manner. The franchise committee recommended it, and the measure was accepted. A minority of the committee proposed that aliens should be required to take a special oath of allegiance to the United States. But even this mild limitation was rejected. This convention was quite determined not to entertain any suggestions that would displease the immigrant.[2]

In 1850 Indiana held a constitutional convention and took occasion to invite the foreign element to that state by means of letting down the suffrage bars. But Indiana was not willing to go as far as Wisconsin had

[1] The press in various parts of the country has become excited over this situation at the present time (February, 1918), and many people seem to think that a startling discovery has been made, for aliens can now vote in seven states of the Union. Certainly it cannot be considered a novel situation, for aliens have voted for congressmen somewhere in the United States for seventy years.

[2] Wis. Conv., 1846, *Journal*, p. 121. This convention was more actively occupied with the negro-suffrage question. While the negro did not stand a chance of getting the ballot, there was considerable debate on the matter. A negro-suffrage clause was rejected sixty-nine to sixteen, while a proposition to submit it to referendum was defeated by a much narrower margin, fifty-one to forty-seven.

gone, for there was some opposition here, and a distinct indication of compromise was evident from the start. It was said with considerable force that the federal Naturalization Act ought to express the best opinion on the question of when a foreigner was likely to be fit to enjoy the benefits of citizenship and incidentally the right of suffrage. But a large majority of the convention thought five years too long a time. It was pointed out that many propertied men were immigrating and that they would not settle in Indiana if they were kept away from the polls for five years. A man who had paid taxes would not be content to have no hand in the government for so long a period.

It is to be noted that what opposition there was against foreigners was maintained merely as a matter of principle—quite a different case from what was found in the East! The immigrants in these western states were for the most part industrious and reliable men, such as would build up the community and develop its natural resources. They were an altogether desirable class of people. Hence there was not the practical objection to bring against them that there was in New York and Massachusetts.

The compromise with those who adhered rigidly to principle was to permit the alien to vote one year after declaring his intention. Therefore if an alien declared his intention soon after his arrival he could vote four years before he could be naturalized. This compromise was accepted by an overwhelming vote of eighty-nine to ten, and while it was small satisfaction to those who believed that only citizens should vote, it did show a little more caution than Wisconsin had exhibited.

This constitution provides the very short-residence requirement of six months in the state and sixty days in the town or city. Negroes and mulattoes were specifically excluded.

Just to get a passing glimpse of what was happening to the negro-suffrage propaganda during this decade one may turn to the pages of this convention's records. The convention was overwhelmingly opposed to negro suffrage, but a very respectable number favored a referendum on the question. However, the bitterness of those who were opposed to it could brook no temporizing compromises—they wanted the suffrage clause to contain the word "white" and also specifically to exclude negroes. Their violence merely indicates the impossibility of calmly debating the issue. Not an inch of ground could the negro gain until the Civil War. The member who urged the referendum was quite aware of this determined, uncompromising attitude. He said, "I know how embarrassing and unpleasant it is for a member to offer and attempt to advocate a proposition in any deliberative body where he realizes that the feelings and, as I may be permitted to add in the present case, the prejudices of the majority are strongly and immovably enlisted against it." The question of negro suffrage itself could not even come to a vote, while the referendum proposition lost only by a narrow margin, sixty-two to sixty, as in Wisconsin.[1]

[1] Ind. Conv., 1850, *Debates*, I, 228. A report came up on its second reading which specifically excluded negroes and mulattoes: "Mr. Thornton: 'I move to indefinitely postpone the section because we have already provided that none but *white* male citizens shall vote.' [Loud cries of 'No! No! No!' 'Let it pass,' 'It can do no harm.'] Mr. Thornton: 'Well, I will withdraw the motion.'" On its third reading

Illinois secured a new constitution in 1848, but it did not extend the franchise to aliens. However, it was due to a very narrow vote that it failed. The usual arguments were put forth in favor of the unnaturalized foreigner, and various propositions for his advantage were entertained. There was considerable debate on the subject, and opposition was not strong—just based on principle. A little more urging and there is no doubt that Illinois would have had a clause at least as liberal as that of Indiana. But the franchise committee did not include the alien in their suffrage clause, and the report of the committee was accepted as it stood. A specific amendment proposed later to admit the alien to the polls was defeated by only nine votes, seventy-six to sixty-seven.[1] The convention was really indolent over the matter, being very much occupied with more controversial questions.[2]

Very much the same situation existed in Michigan where in 1850 a constitutional convention was held. The same complaint was heard about foreigners who owned large amounts of land on which they paid taxes and still were not able to vote. In some localities the foreign element constituted such a large proportion of the population that frequently a mere handful of legal voters could be found, even in a good-sized community. Such conditions as this caused much dissatisfaction. Various short periods were suggested after which the

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it passed without a word. The incident shows that opponents of negro suffrage were taking no chances whatever—they wanted to exclude the negroes twice.

[1] The very mention of negro suffrage raised a storm of protest. A resolution to cut the word "white" out of the suffrage clause was snowed under one hundred and thirty-seven to eight.

[2] Ill. Conv., 1847, *Journal*, p. 205.

alien was to be permitted to vote; one novel measure provided that if at the end of the five-year period the alien did not take advantage of his opportunity and become naturalized his right to vote was to be taken from him. This was a rather impractical suggestion, of course, and did not meet with much favor.

There was some slight opposition to alien suffrage, and one interesting petition was presented coming from the naturalized citizens of the state asking that suffrage be not granted to aliens. But it was hard to overcome the economic arguments which pointed out that already the state had spent many thousands of dollars to induce immigrants to settle in the state, that Wisconsin and Indiana were permitting them to vote, and that Michigan would lose her share if she did not do likewise.[1] However, the foreigners lost their cause by a narrow margin, although opposition had not been keen; and the Michigan constitution of 1850 admitted only white male citizens to the suffrage after a short residence of six months in the state. The short residence was calculated to attract immigrants, at least to a slight degree.

The cause of the free negro was brought up and at once gave rise to the same bitter feeling that had characterized the debate on the subject in the other states of this section.[2] The delegate who introduced the matter frankly admitted that he knew that his cause was

[1] Mich. Conv., 1850, *Debates*, p. 47.

[2] He was supported by Mr. Leach, who gave an oration on the past glories of Africa. "Her victorious arms nearly annihilated the Romans. Her black Hannibal will ever be found in the catalogue of the Caesars and Bonapartes.

"A member: 'That is incorrect. Hannibal was not a colored man—not a negro.'

"Mr. Leach: 'Well, I am quoting democratic authority, and I hope democrats will not question such authority.'"—*Ibid.*, p. 285.

hopeless, and that he merely begged an opportunity to speak in order that he might feel that he had done his duty.[1] Of course his measure was utterly swamped, and of course a proposal was made for a referendum. This prevailed, and the question was later put to the electorate, where it was defeated two to one.

These facts about the question of negro suffrage are very interesting when it is considered that only a few years later Congress is found imposing negro suffrage upon the South in order not to violate the principles of democracy. Everywhere in the North negro suffrage was being denounced, in an unmistakable manner, in constitutional conventions and at the polls. And yet Congress, in the face of this record of repudiation, declared that the nation demanded suffrage for the liberated negro. No wonder that in bitter terms the accusation came from the South that Congress acted from ulterior and revengeful motives.

Iowa, Florida, and Texas had all been admitted to the Union by this time, but there was nothing particularly noteworthy concerning suffrage in their constitutions. They all excluded the negro, and Iowa had the short-residence term of six months. California came into the Union in 1850, and the convention which drafted her constitution the year before had faced a rather difficult question concerning Mexicans. The treaty of peace with Mexico permitted the Mexicans who wished to do so to become United States citizens, but if California had a provision in her constitution restricting the suffrage to "white males," a large number of these citizens might be disfranchised. Furthermore, a great

[1] Mich. Conv., 1850, *Debates*, p. 285.

many Indians had become Mexican citizens, and while California was not opposed to admitting true Mexicans to the suffrage, there was great opposition to giving the Indians any chance to vote. There were a great many Indians in the state ready to take advantage of any weakness in the law for the sake of the money they could get. But the convention passed the burden on to the legislature. All white male citizens were to vote, including Mexicans who became citizens under the terms of the treaty, and the legislature was given the duty of excluding Indians in appropriate terms.

California's contribution to the negro problem was a resolution in convention calling upon the legislature at its first session to pass laws effectively excluding free negroes from the state and to prevent owners of slaves from bringing them into the state. In the East, in the West, and in the Central states the negro was emphatically repulsed.

In the same year, 1850, Kentucky received a new constitution. There was not much real controversy over the suffrage clause, although certain fanatical persons succeeded in using up a vast amount of time in argument. They sought to exclude even naturalized citizens from the polls. It was an echo of the Native American anti-Catholic movement that was being stirred up about this time. The debate soon ran over into the Catholic question and waxed hot and long without much point.[1] Those responsible for injecting the argument had been put off and put off until nearly the end of the session, but finally their representative got the floor, and while he admitted that interest had flagged in

[1] Ky. Conv., 1849, *Debates*, p. 1012.

Native Americanism he wished still to do his best, and he did for many hours. But the convention was by no means willing to put extra burdens upon the naturalized citizen. While there was not the same motive to give them suffrage before naturalization as there was in Wisconsin and Indiana, there was also lacking the sentiment that prevailed in New England. The only feature of this constitution that could be looked upon as working against the foreigner was the two-year-residence requirement.

The constitution under which "bleeding Kansas" joined the Union in 1861 was drawn in 1859. As the epithet implies, there had been a long and bitter contest over this state as to whether or not slavery should be permitted there. There is no occasion to go into that controversy here. It is dealt with in most general histories and occupied a great deal of time in Congress;[1] but the constitution finally adopted and put in operation in Kansas permitted foreigners to vote after declaring their intention to become citizens.

On February 22, 1856, the American party ("Know-Nothings") held a national convention at Philadelphia and drew up a party platform. They specifically denounced Wisconsin and certain territories for having admitted aliens to the suffrage and proceeded to declare some very radical doctrines. Two of the articles in their platform are as follows:

> Article 8. An enforcement of the principle that no state or territory ought to admit others than citizens to the right of suffrage or of holding political offices in the United States.

[1] *House Committee Reports*, First Session, Thirty-fifth Congress, III, 82, No. 377.

Article 9. A change in the laws of naturalization, making a continued residence of twenty-one years, of all not heretofore provided for, an indispensable requisite for citizenship hereafter.[1]

This party had been growing for some years and was one of the very few parties in the country to exist merely for the purpose of exploiting a particular, narrow policy. It opposed foreigners and Catholics, and that is about all it stood for. The party was lost in the Civil War.

The Democrats in their convention the following June took occasion to score the "Know-Nothings" for their undemocratic opinions, but they had nothing positive to say about the foreigner and the policy certain states were following in admitting aliens to the polls.

But the question had come up in Congress and was found occupying the attention of the Senate even while the Democrats were holding their convention.[2] A certain very persistent member was able to get up for debate a bill that provided the anti-foreigner elements every chance they needed to express their views. The bill itself was too extravagant to enlist any intelligent support, for it sought to oblige foreigners to remain in the country twenty-one years before they could become naturalized. That was considered the best way to prevent them from voting without interfering with the state's rights in the matter of suffrage.

It was said that foreigners constituted a very grave menace where they exercised political power because they settled in groups by themselves and were not assimilated and did not develop an intelligent interest in, or

[1] McKee, *op. cit.*, p. 100.

[2] *Congressional Globe*, First Session, Thirty-fourth Congress, Part II, p. 1409.

sympathy for, American political institutions. Many of them were in a condition of abject ignorance, it was said, and were easily induced to become the tools of corruption. Attention was called to a large number of revolutionary, anarchistic, and sacrilegious organizations of foreign-born men that were flourishing throughout the country. The propaganda literature issued by these organizations was decidedly inflammatory, and was greatly enlarged upon by "Know-Nothing" people. But there was considerably more force in the argument that the foreigner was adding fuel to the slavery controversy. No matter how ignorant and stupid the immigrant might be, he was more than likely to be sure of one thing—that he did not believe in holding slaves. He could not discuss state's rights, theories of sovereignty, and nullification, but he was unequivocally opposed to the slaveholder, and that fact made him an important factor.

However, for the most part the arguments against the foreigner were obviously the outgrowth of prejudice if not of fanaticism. The "Know-Nothings" had their day in the senate and were treated with indulgent contempt, after which the twenty-one-year naturalization bill was quietly put away.

In 1857 Minnesota came into the Union, and in the same year Iowa provided herself with a new constitution. The debates in the Minnesota convention that formed her constitution show how the foreigner came to get the franchise there. The original committee report was in favor of it and there was practically no opposition.[1] The idea seemed to be that on general principles it was not a good thing to let a non-citizen vote perhaps, but some-

[1] Minn. Conv., 1857, *Debates*, p. 425.

thing ought to be done to attract immigrants to the state, so the alien was permitted to vote after declaring his intention. Another inducement they decided to try was the six-month-residence requirement.

In contrast to this benevolent attitude toward the foreigner it is worth while noting that the free negro did not have enough friends even to stir up a debate. The propriety of admitting Indians to vote occupied more attention than the negro problem, and the constitution excludes negroes, while it only excludes such Indians as were uncivilized.

But in Iowa there was a hot battle over the negro, in which he lost.[1] Here too a six months' residence was all that was required. There is no evidence that it was placed low to attract aliens, for the foreigner question did not come up for debate to any extent.

Out on the western coast a new state came in to join California. Oregon was admitted in 1859. This state has always been radical in its policy, and it is interesting to note that Oregon began her history by permitting aliens to vote. Those who declared their intention and lived in the state one year were granted the elective franchise. This involved a six months' longer period than was required of natives. Chinamen, negroes, and mulattoes were specifically excluded from the suffrage.

For a moment take a bird's-eye view of all the states just before the war. On the Pacific coast the Chinaman was excluded with violent indignation. On the Atlantic coast the Irishman was the object of execration. Massachusetts in 1859 amended her constitution to require all

[1] Iowa Conv., 1857, *Debates*, p. 649.

foreigners to live in the state two years after naturalization in order to vote. In the middle states the foreigner was being enticed with brief residence periods and even the franchise itself. But everywhere the door was slammed in the face of the negro. New states that came in followed the practice of their neighbors for the most part, being subject to the same forces that were working on the older states in the neighborhood.

Sometimes a policy was fixed before the territory assumed statehood. But the action of a territorial government could hardly be considered of great significance. The policies of the territorial governments came to be crystallized and perpetuated in the state constitutions or else were abandoned as being no longer popular.

It has been the policy of this government from the very earliest times to permit the inhabitants of territories to establish their own institutions, and above all not to impose upon them measures that would be out of harmony with the spirit of the times and of the locality. Hence the suffrage requirements in the territories have always been liberal, though not always the same for each territory. The Northwest Ordinance of 1787 prescribed a freehold qualification which of course was in keeping with the times. But when new territories sought to become organized early in the nineteenth century all such restrictions were abandoned. Congress would pass a separate act organizing a territory as occasion demanded and almost invariably white-manhood suffrage was granted.[1] But during these years

[1] *Reports of Committees*, House of Representatives, First Session, Thirty-fifth Congress, No. 371, p. 966.

from 1840 until the war the organic acts of some territories permitted aliens to vote, whereas in other territories they were not included.[1] This condition gave rise to a great deal of dissatisfaction, for it was said that there was no excuse for Congress not adopting a consistent practice and making suffrage rights uniform throughout all the territories. A committee of the House of Representatives was set to work investigating the matter in 1858 and reported that it was a violation of the spirit of the Constitution that foreigners could vote in some states and not in others. But although Congress had the power to interfere in the territories and impose its will upon the territorial government until statehood was achieved, to have done so would have been to violate the well-established custom of leaving territories free to do as they saw fit.

However, as said before, what was done in the territories is not very important. Congress was in a position to dictate at any time,[2] and furthermore there was no adequate machinery for expressing the popular will even if it had been authoritative. Political consciousness in the territories did not really awake until constitutional conventions were called, and the constitutions they drew up as permanent authoritative instruments were the first significant expressions of popular will.

Speaking of the territories, it may not be out of place just to mention the District of Columbia. The city of Washington was incorporated on May 3, 1802, and it was provided then that the city council should be elected

[1] W. F. Willoughby, *Territories and Dependencies of the United States*, Index.

[2] Utah 279, 22 Stat. 30, 24 Stat. 635.

by the white taxpayers resident in the city one year. Such a provision was of course in perfect keeping with the spirit of the time, and it prevailed until 1855, when the taxpaying qualification was dropped. Negroes, however, were still excluded.

The purpose of this chapter has been primarily to show how the alien was received in the middle western states and why the suffrage was extended to him; but it is hoped that the comments made from time to time about the way in which free negroes were received have not gone unnoticed. Congress saw fit later to fling wide the polls to the negro, but there was not one shred of evidence to show that anywhere in the North men wanted negro voters in their midst. Done under the cloak of hypocrisy in feigned support of democratic principles, it was in truth a revengeful, punitive measure directed at the South, for which the entire nation suffered.

CHAPTER VI

BEGINNINGS OF WOMAN SUFFRAGE

It is now appropriate to take up an entirely new phase of the suffrage expansion. The elective franchise had been demanded and secured by practically all the native white men in the nation, a tendency was manifest to give it to the alien in many localities, the negro-suffrage problem was due to be solved—men little realized how soon—and then came the demand from an entirely new quarter. Women demanded the ballot. Property barriers had been swept away, race and nationality were not insuperable obstacles—but could the tide break through the barricade of sex? It surely did! And such great progress has the movement made that many do not realize that the first steps were taken so recently as 1848.

It really seems quite fitting that the United States should have been the original battleground upon which this issue was to be fought out. Whether or not one is in sympathy with woman-suffrage claims, they are made upon the basis of democracy, and this country was the proper place to try them out. A recent writer has said, "North America is the cradle of the Woman's Rights movement," and the author dilates upon the liberal Colonial institutions to prove it.[1] But the infant outgrew the cradle with startling rapidity.

[1] K. Schirmacher, *Modern Woman's Rights Movement*, p. 3. However, this book, written by a foreign author, gives a very incorrect impression. It implies that as the Colonial charters apparently did

Woman suffrage was almost unheard of up to the middle of the nineteenth century. The exceptional case in New Jersey proves the rule; and the facts have been retold so many times that apologies should be offered for giving them here.[1] In the New Jersey constitution of July 2, 1770, the privilege of voting for assemblymen was given to "all inhabitants of full age who are worth fifty pounds proclamation money." There was nothing to indicate that anybody expected women to take advantage of this clause, and it seems that they did not do so in sufficiently large numbers to attract any attention, for in 1707 the new constitution contained the phrase "all free inhabitants," etc. But some closely contested elections a few years later stimulated interest to such an extent that women did seek to vote, and no legal impediment could be discovered to prevent them. The action ultimately led to such disorders that in 1807 the legislature took proper steps to put a stop to woman suffrage for good and all.

But the movement in the later forties was quite a different thing. Here was no frivolous attempt to take advantage of careless phraseology, but a firm demand on the part of serious people that the suffrage be granted to women. This demand was only one aspect of the general movement for the so-called emancipation of women and has been greatly overemphasized. There were a great many reforms that the women wanted in order that they might be relieved of serious disabilities

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not exclude women from the franchise they took an active part in politics, and that the first constitutions in the various states marked a distinct reaction. Of course such an interpretation is quite erroneous.

[1] *Historical Magazine*, I, 360.

and injustice. But they seemed to think that if they had the suffrage everything would be put right at once. Even the wisest of them chased this phantom and thought they saw in woman suffrage a panacea for all ills.[1] Almost fanatical in the worship of their cause, the originators of the movement had visions of the millennium, at once interpreted democracy in terms of their own pet hobby, and set about the task of reforming the country with energy exceeded only by their perseverance. Extravagant panegyrics were heaped upon anyone who spoke in favor of the cause, however fatuous his arguments might be, while studied vituperation was bestowed upon all who blocked the way.

The point to be made in this connection is that the demand for woman suffrage did not slowly emerge and take definite form as a result of sober thought. It broke like a bomb shell. No compromises were tolerated—full suffrage for women was demanded at once. Contrast this situation with the move for complete manhood suffrage! These advocates of the new cause would not even think of halfway measures. The propositions that property-owning women should vote, that unmarried women should vote, that taxpaying women should vote, were never entertained for a moment. Of course such compromises may have had no merit, it is true, but those were the painful steps by which both white men and negroes obtained the vote. The women conjured up every disability under which their sex had ever labored

[1] "While complaining of many wrongs and oppressions, women themselves did not see that the political disability of sex was the cause of all their special grievances."—Stanton, Anthony, and Gage, *History of Woman Suffrage* (4 vols.), I, 15.

in truth or fiction and shouted their wrongs from every housetop. The cure-all was to be full, complete, unhampered woman suffrage.

It cannot be denied that women had suffered great injustice and found themselves in a most humiliating position under the common law.[1] And in many states even the most serious disabilities had not been removed. The old theory of the law was that a married woman's legal existence was suspended, or incorporated in that of her husband, and she was said to be in a state of "coverture." Husband and wife were one, and that one the husband. He assumed all her debts and she was not capable of maintaining legal relationships independent of him. Her property became his, her earnings were his, she could bring no action at law without his aid, and all her dealings with the government had to be through him. Not only could she hold no property in her own right, but she had no rights with regard to her children. In a word, no wife could go into court and claim anything so long as her husband was not a criminal. Obviously the woman had quite enough to complain about, but it is significant that most of these disabilities were removed without her exercising the franchise.

It was easy for the women to tie their cause up with the slavery issue. Time and again they reiterated the statement that their condition was no better than that of the slave. This gross exaggeration must have tried the patience even of those who were doing all they could to remedy the situation. But to associate the plight of the woman with that of the negro showed clever tactics and won large numbers to their cause. And indeed it

[1] Blackstone, *Commentaries*, I, 442.

has been said by many that the woman-suffrage movement dates from the World's Anti-Slavery Convention held at London, June 12, 1840. After all, the demands of the women can be summed up in a very brief statement. Right from the very first day on which they started out upon their crusade they simply demanded a legal right to do whatever a man could do.

The first woman's rights convention was organized by women who had attended the Anti-Slavery Convention in London.[1] They issued a call upon their own initiative, inviting all who were interested to attend. The convention met at Seneca Falls, New York, July 19, 1848. It is almost impossible today to realize what moral strength it required for women to undertake such a step. The prejudice of centuries weighed down upon them. No wonder they lost courage at the last moment and called in sympathetic men to run the convention for them. But the women read their papers and outlined a basis for future campaigns. In addition to the right to vote they claimed equal rights in universities, the trades, and professions, and the right to share in all political offices, honors, and emoluments. They demanded equality in marriage, personal freedom, property rights, rights over their children, the right to make contracts, to sue and be sued, and to testify in court.

At once the specific arguments in favor of woman suffrage were based on "right." Of course there was an implication that satisfaction of this right would necessarily involve the good of the state. But the fact remains that it was women's "rights" that were insisted upon, and they were said to have a "right" to vote. It

[1] Stanton *et al.*, *op. cit.*, I, 67.

was not until this proposition was bolstered up by the expediency doctrine that the cause made fundamental headway. But the claim to "rights" was the opening wedge and served to bring together a nucleus of fighters ready to do more and sacrifice more than people who supported the cause for different reasons. To be sure, a study of the alleged "right" might induce one to believe that it would be for the good of the state to permit women to vote. But practically no one came out boldly and said: It is for the good of the social order, it is for the good of the state, that women should vote. Such a statement was too blunt, too harsh, not at all idealistic. Men pretended to avoid such materialistic motives; they had done so in the past and they did so then.

There was no trouble in adjusting the old arguments to suit the new occasion. For more than half a century the advocates of broader suffrage had been filling up their arsenal with weapons to use upon conservatives. Many of the liberals were shocked beyond expression and left speechless when the women raided their armory, took their weapons, and went forth to use them as they had seen them used by men. Natural, inalienable, inherent right! No taxation without representation! Government by consent of the governed! All that old-time revolutionary philosophy with its mixture of truth and abominations was revived once more and spread broadcast by the abolitionists and woman-suffrage advocates alike.

Characteristic of this sort of argument is a statement to be found in the records of the Massachusetts constitutional convention of 1853:

I maintain first that the people have a certain natural right, which under special conditions of society manifests itself in the form of a right to vote. I maintain secondly that the women of Massachusetts are people existing under those special conditions of society. I maintain finally, and by necessary consequence, that the women of Massachusetts have a natural right to vote.[1]

That is the sort of argument that marked the beginning of the woman-suffrage movement. Once more the strange phenomenon appeared—the suffrage expanding on a wave of specious doctrine. But it caught the popular fancy and served to bring the issue forward.

The opposition was indignant, more or less ridiculous, and thoroughly unprepared. Men objected in stuttering bewilderment at the audacity of women. Religious nonsense was paraded by the clergy, and what may almost be called sexual prejudice and morbidity had to be overcome before the subject could be debated on a rational plane. Indeed the opposition hardly took definite form before the Civil War. The only consistent opposition to be found was in the church. Disorderly mobs at the suffrage meetings howled their derision, well supported by the clergy. The newspapers reported everything to the disadvantage of the suffragists and caused as much trouble for them as they could. But responsible statesmen and thinking men were slow to come to the point of considering it necessary to give the matter any serious attention. They were inclined to stigmatize the suffrage meetings in the same careless, impersonal manner with which they would denounce an indecent show; or else they resorted to indulgent ridicule or vulgar jest.

[1] Mass. Conv., *Debates*, II, 726.

But the propaganda was carried forward in spite of all. Conventions and meetings were called in nearly all the states and principal cities. For the most part they were informal. Anyone who had anything to say was invited to speak. With unparalleled chivalry the women permitted their opponents to address them from their platforms. To the credit of the women it must be said that these opponents were frequently received with more courtesy than they deserved. But it must be remembered that men of the best type were not yet in the field against the suffragists.

In practically every city where the women met they had to face hostile public sentiment. Clergymen refused to open their meetings with prayer, pompous school men strode into their midst and sneered at them in a condescending manner. There was plenty of sound, dignified, rational argument with which these women could have been met, but there was no one to use it. A dignified opposition from able men would have troubled the women far more than abuse and ridicule. If they had had to meet such men as John Adams, Daniel Webster, and Chancellor Kent the story of woman suffrage might have been different. Men of that type really did oppose the woman-suffrage movement, just as they had formerly opposed the abandonment of property tests. It is therefore somewhat unfortunate that they did not consider it worth their while to come forward at this time. Then the movement would at least have been tried on its real merits and might have been checked.

The national convention at Philadelphia in October, 1854, was one of the most significant. The president of

the convention, a woman, expressly repudiated all doctrines based on expediency.[1] She denied that expediency had anything to do with the matter and only spoke of woman's "rights." The convention hall was packed at every session in spite of admission fees, and many were turned away. William Lloyd Garrison was a prominent figure on this occasion and was chiefly useful in meeting the opposition of the clergymen. He said that he did not have to go to the Bible to get proof that he was right, and he cared not a straw for quotations from Paul.

But while this was a significant convention the real battlefield of woman suffrage has always been in New York. For some unaccountable reason most of the strong-minded women of the country seem to have lived in that state. There it was that most of their conventions were held, and from there the authoritative propaganda issued.

The yearly conventions were the scenes of tumult and disorder.[2] The leaders did nothing to allay the irritation their cause was stirring up. They felt that it would stultify them to compromise their principles and curry favor with the crowd. Hence they openly

[1] "There is one argument which in my estimation is the argument of arguments, why woman should have her rights; not on account of expediency, not on account of policy, though these too show the reason why she should have her rights; but we claim — I for one claim, and I presume all our friends claim — our right on the broad ground of human rights; and I for one will say *I promise not how we shall use them.* . . . . By human rights we mean natural rights. They are guaranteed by the Declaration of Independence and . . . . what right has man to deprive her of her natural and inalienable rights?"—Stanton *et al.*, *op. cit.*, I, 376.

[2] *Ibid.*, p. 567.

fraternized with negroes, certain of their numbers wore bloomers on the platform, and they affected masculine ways until the crowd was roused to frenzy. Far from being dismayed at the violent demonstrations, they were only stimulated to greater determination and pursued their object with a zeal scarcely exceeded by the abolitionists themselves. Indeed many of the latter were leaders in the woman-suffrage movement.

The close connection between woman suffrage and the abolition movement cannot be too greatly emphasized. Negro suffrage was not dwelt upon to any great extent, but rather woman was compared to the slave because of her common-law disabilities. That was the point of contact. After the Civil War the women no longer linked their cause with that of the negro. They were not vitally concerned about suffrage for him either before the war or afterward. Like other advocates who went before them they supported the principle of universal suffrage only in so far as it furthered their particular interests, and they simply exploited the negro as a slave to arouse sympathy for themselves. There was really no essential connection between woman suffrage and the negro problem; but the negro was used for all he was worth nevertheless.[1]

[1] At one of the suffrage conventions a negro woman spoke from the platform amid hisses and turmoil. She enjoyed considerable notoriety and was known as Sojourner Truth. The authors have this to say of the incident: "Sojourner combined in herself, as an individual, the two most hated elements of humanity. She was black and she was a woman, and all the insults that could be cast upon color and sex were together hurled at her; but there she stood, calm and dignified, a grand, wise woman, who could neither read nor write, and yet with deep insight could penetrate the very soul of the universe about her."—Stanton *et al.*, *op. cit.*, p. 567.

In addition to holding conventions of their own the women devoted a great deal of attention to constitutional conventions and state legislatures. They went to Kansas, they worked in Ohio, they spent much time in Massachusetts. But their progress in these conventions was almost negligible and cannot be dwelt upon here. In the state legislatures they always found members to present their petitions, and these were referred to committees and usually stayed there. Sometimes these petitions gave an opportunity for coarse and vulgar jesting, at other times they were received with great annoyance and asperity, and occasionally a dignified and courteous hearing was given. But the result was always the same. No serious debate ever developed.

It can now be seen that the women had made a good start on the road to suffrage. Their conventions were a permanent institution, they had organizations in many of the states, they had able writers and speakers advertising their cause all over the North. (They seem to have made no attempt to penetrate the South.) Their cause was ridiculed everywhere. It had not yet been developed to a point where the real issues could be tried, but that time was fast approaching. Thus the matter stood at the outbreak of the Civil War, and after that event two great conspicuous suffrage movements went forward side by side: (1) the expansion of the suffrage to include the women, and (2) the disfranchising of the negro. But there are a few loose ends to be caught up before the problems of the war are discussed.

It will be recalled that early in the century when the property test was giving way many of the states did not include even residence requirements in their suffrage laws,

much less restrictions on soldiers, students, criminals, etc. The property test automatically excluded a great many who proved to be undesirable when the old prohibitions no longer kept them from the polls.

First among the groups to be proscribed were the soldiers, sailors, and marines in the United States Army or Navy. There was great danger in permitting these men to vote in the localities where they might be situated, because frequently it would happen that a large-enough number would be in the vicinity of a town completely to dominate and control local politics. It is unnecessary to point out the serious objections to permitting soldiers to vote under these circumstances. At this particular time, just before the war, twenty-one states out of the total thirty-four excluded soldiers by the expedient of not permitting them to gain a residence by reason of being stationed in the state.

For somewhat similar reasons it is frequently considered necessary to exclude from the suffrage students located at institutions of learning. Ordinarily they have no intention of establishing permanent residence, and their interest in local politics is but transitory. Since only seven states excluded them from suffrage it would seem that the problem was not serious at this time. In 1845 a contested election brought the issue up in Congress relative to some Princeton students.[1] A committee investigated the matter and its report covers the merits of the problem in a thoroughgoing way. But it is really not a question of great significance.

The insane, idiots, persons *non compos mentis*, and those under guardianship presented another problem.

[1] *Reports of Committees*, First Session, Twenty-ninth Congress, Vol. II, No. 310.

These persons are not competent to vote anyway, and it is not necessary to exclude them.' However, the practice has always been very general, and even before the war fourteen states specifically barred them.

Paupers and inmates of public institutions such as almshouses, poor farms, and other asylums maintained at public expense had to be specifically excluded if they were to be kept from voting, although only fifteen states did exclude them. The simple phrase excluding "paupers" is almost impossible to interpret. It is hard to tell when a mere loafer or beggar becomes an out-and-out pauper, and whether or not a person receiving private charity is, strictly speaking, a pauper. Nearly all the states excluding them simply used that indefinite term. It would seem that many problems would be circumvented if the constitution were simply to say that all inmates of public asylums should be disfranchised. That would solve the real problem, would prevent officials from exploiting the inmates of institutions for their own purposes, and would probably reach almost all who should be reached.

As to criminals, there was great diversity of practice. Nineteen of the states disfranchised them in one way or another. Conviction of infamous crimes or penitentiary offenses were usually named first as being cause for permanent exclusion from the suffrage. Perjury, forgery, bribery, and larceny were frequently added to the list, but as they are usually punishable by penitentiary sentence there would seem to be small cause for the list. Further, it is interesting to find dueling mentioned so many times. A great many of the states were trying to make use of their suffrage laws in stamping

[1] Mechem, *Public Officers*, p. 102.

TABLE III

Essential Qualifications in 1860

State	Residence			Negroes May Vote	Aliens May Vote	Groups Specifically Excluded				
	In the State	County, Town, or Parish	Election District			Soldiers, Sailors, etc.	Students	Insane, Idiots, etc.	Paupers, etc.	Criminals
Alabama	1 yr.	3 mos.	.....	...	...	X	...	...	...	X
Arkansas	6 mos.	.....	.....	...	...	X	...	...	...	...
California	6 mos.	1 mo.	.....	...	...	...	X	X	X	X
Connecticut	.....	6 mos.	.....	...	...	...	...	...	...	...
Delaware	1 yr.	1 mo.	.....	...	...	X	...	X	X	X
Florida	1 yr.	6 mos.	.....	...	...	X	...	...	...	X
Georgia	.....	6 mos.	.....	...	...	...	...	...	...	...
Illinois	1 yr.	.....	.....	...	...	X	...	...	...	X
Indiana	.....	.....	.....	...	X	X	...	...	...	X
Iowa	6 mos.	.....	.....	...	...	X	...	X	...	X
Kansas	6 mos.	1 mo.	.....	...	X	X	X	X	X	X
Kentucky	2 yrs.	1 mo.	60 days	...	...	...	...	...	...	...
Louisiana	1 yr.	6 mos.	.....	...	X	...	...	...	...	...
Maine	.....	3 mos.	.....	X	...	X	X	...	X	...
Maryland	1 yr.	6 mos.	.....	...	...	...	...	X	...	X
Massachusetts	1 yr.	6 mos.	.....	X	...	...	...	X	X	...
Michigan	6 mos.	.....	.....	...	...	X	X	...	X	X
Minnesota	6 mos.	.....	30 days	...	X	X	X	X	X	X
Mississippi	1 yr.	4 mos.	.....	...	...	...	...	...	...	...
Missouri	1 yr.	3 mos.	.....	...	...	X	...	...	...	...
New Hampshire	.....	.....	.....	X	...	...	...	...	X	...
New Jersey	1 yr.	5 mos.	.....	...	...	X	...	X	X	X
New York	1 yr.	4 mos.	.....	X	...	X	X	...	X	X
North Carolina	.....	1 yr.	.....	...	...	...	...	...	...	...
Ohio	1 yr.	.....	.....	...	...	...	...	X	...	X
Oregon	6 mos.	.....	.....	...	X	X	X	X	X	X
Pennsylvania	1 yr.	.....	10 days	...	...	...	...	...	...	...
Rhode Island	1 yr.	6 mos.	.....	X	...	X	...	X	X	X
South Carolina	2 yrs.	.....	.....	...	...	X	...	...	X	...
Tennessee	.....	6 mos.	.....	...	...	...	...	...	...	X
Texas	1 yr.	6 mos.	.....	...	...	X	...	X	X	...
Vermont	1 yr.	.....	.....	X	...	...	...	...	...	...
Virginia	2 yrs.	1 mo.	.....	...	...	X	...	X	X	X
Wisconsin	1 yr.	.....	.....	...	X	X	...	X	...	X

out this evil custom. It seems a little ridiculous to assume that fear of losing suffrage would deter a man from fighting a duel, and it calls to mind the absurd law, so frequently found, which seeks to punish one who attempts suicide. These laws are somewhat stultifying.

The residence requirement of one year in the state was almost universal. A few demanded two years, and some of the western states only six months. Where a a variation from the one-year requirement is found it is pretty sure to indicate unusual conditions. Either the state was very conservative, like Virginia, or else was particularly eager to attract immigrants.

In six of the states free negroes were permitted to vote, and in five states aliens enjoyed the franchise.

Table III presents the important facts about the suffrage in the thirty-four states just before the Civil War. The aim has been to bring out the striking variations from the normal; further details would be unessential and would only blur the salient features. A glance at the table will show that many states were careless in the matter of prescribing residence requirements, especially in the county or election district, and all except three failed to exclude at least one of the five general classes usually disfranchised: soldiers, students, the insane, paupers, and criminals. In later years the states began to provide in their constitutions for the registration of voters, and also to secure purity in elections by regulating campaign contributions and introducing corrupt-practices legislation. But for the present it is enough to observe that the table shows the situation as it was just before the war.

CHAPTER VII

SUFFRAGE AND THE CIVIL WAR

The Civil War was a greater shock to the normal development of suffrage than anything that has come before or since. Along the broadening path of suffrage at some point the negro was sure to enter in, but the fortunes of the Civil War overturned all normal processes that were at work to bring him in and introduced an artificial element, in the shape of coercive legislation, to a degree quite out of harmony with the legal policy followed up to this time. So it is quite necessary that considerable space be devoted to a study of the war and the reconstruction period in order that its precise influence upon the suffrage franchise may be given proper weight.

Before the negro could even be considered as a fit subject to enjoy suffrage rights he must be freed from bonds of slavery. But it is doubtful if many of those who fought so ardently to free the negro thought one way or another about his enjoyment of the franchise later. It is well known, of course, that President Lincoln was loath to look upon the issue of the war as being slavery. Preservation of the Union was the outstanding issue in his mind, and only when pressed to it, in the latter part of the war, did he come out with a definite policy as regarded slavery. He tried to persuade the people to look on the war, not as an anti-slavery crusade, but rather as a noble effort to maintain the Union.

But it was not long before the exigencies of military occupation in the South brought the slavery question up in such a way as to demand the expression of a policy on the part of the administration. It came ultimately in the Emancipation Proclamation. But previous to this the military commanders had been in the practice of seizing slaves as the property of their foe and promptly setting them free. Gradually this practice resulted in building up a group that was a new factor in the political organization in that it was potentially able to exercise the suffrage. A negro enslaved was not much of a problem when it came to determining matters of political status; but a negro free was indeed a problem until he was safely fitted into his niche in the political structure of the community, until his civil rights were established and suffrage was granted to him or withheld from him. The policy of some states, as has been seen, was to recognize no essential difference between the free negro and the white man, but not many were ready to adopt such a simple, easy policy; and consequently this rapidly growing factor of political significance, the free negro, demanded the determination of some kind of policy in the matter of giving him a status.

Attention should be given for a moment to the steps by which this new factor came into being. On January 1, 1863, the Emancipation Proclamation was in force. It did not free the slaves in the sense in which it is usually believed. The President had no power whatever to free slaves. The proclamation can hardly be considered as more than a military decree. It announced a policy of disposing of the enemy's property.[1]

[1] W. A. Dunning, *Essays on Civil War and Reconstruction*, p. 50.

Whenever a military commander got possession of this particular sort of property belonging to the foe, it was to be set free. Slavery was a recognized institution in the United States until the Thirteenth Amendment was passed; and the President's proclamation could no more set free the property in negroes of a law-abiding citizen than it could have turned loose the cattle in his field. President Lincoln was quite aware of this, of course, and never made a pretense that his proclamation did more than set at liberty the property seized from those who were in insurrection. It almost compromised him in his policy of not recognizing the southerners as legitimate, foreign enemies—but that cannot be dealt with here. Suffice it that the practical effect was to swell immeasurably the ranks of free negroes. At the same time Tennessee, the loyal parts of Virginia and Louisiana, and the border states were not affected. Secessionists could have retained their slaves by returning to the Union, so far as the proclamation was concerned.

Furthermore, the proclamation acted as a wedge to split apart those who looked upon preservation of the Union as the only issue and the abolitionists who believed that the whole fundamental purpose of the struggle was to put an end to slavery. It crystallized sentiment, and from January, 1863, until the end of the war the anti-slavery idea grew until there could be no doubt that the victory of northern arms would mean universal freedom for the negro. In June, 1864, at Mr. Lincoln's behest, the Republican party stood against slavery in its platform, and in his first address to Congress, December, 1864, immediately following his election, he suggested a constitutional amendment to abolish slavery.

When it passed Congress, January 31, 1865, he was very much pleased and regarded it as a culmination of his work. Hence at this time there emerged a problem of future years: how to fix the status of the new group in the political structure, and more particularly whether to give this group the suffrage or not.

If it had been possible to carry out the plan of President Lincoln the story of the suffrage would indeed have been different. It is familiar to every student of the Civil War period that President Lincoln chose not to recognize the principle of secession. He maintained that no state had the power to secede; in a word, no state could secede. What really happened at the time of the breaking of peaceful relations was that a very large number of individuals in the South united in insurrection against the federal government. The states did not withdraw from the Union—that could not be—but the states were left mere skeletons, still standing, ready to be filled in at any time by loyal men who would put the normal state government machinery in operation once again and resume relations with the federal government. In the meantime it was the business of northern arms to force the rebellious citizens of the South into proper observance of the law.

It will not be attempted here to do full justice to Mr. Lincoln's theory about secession. Just a hint of it is given. But it will be seen that in accord with this theory whenever normal government institutions could be set up in those states working in proper harmony with the federal government there could no longer be a pretense of secession. Thus on December 8, 1863, the President issued a proclamation stating that he was

ready to recognize any state government put in operation by 10 per cent of the state's population if it were loyal to the federal government. The idea was simple enough and could have been easily worked out.[1] As the resistance of the South broke down and larger portions of the territory came under northern control, governments could have been, and were, set up which could reasonably be looked upon as legitimate state governments restored.

The fate of suffrage under such circumstances can easily be imagined. Slavery would have been abolished and the free negro would have been a political problem. But each state would have dealt with the problem just as the practice had been before the war. Suffrage always was a matter for exclusive state control. Each state would have adjusted its suffrage laws, if indeed that were necessary, to solve the problem of the free negro. Needless to say he would have been permanently disfranchised by every southern state. Then would the work of broadening the suffrage to include him have gone on just as it had before the war and with regard to other classes seeking the franchise. It would have been necessary to plead the cause of the free negro in each state, just as woman suffrage is being sought today in the legislative halls of all the states.

But Mr. Lincoln died and all his plans went wrong. The task of carrying out his policy fell to the hands of President Johnson, a man who did not enjoy the confidence and respect of Congress to the same degree as did Mr. Lincoln. But he promptly set to work to reorganize the South as his predecessor meant to do.

[1] W. A. Dunning, *Essays on Civil War and Reconstruction*, p. 66.

He aimed to establish competent governments in the southern states, supported by a sufficient number of loyalists to make them effective. To this end provisional governors were appointed in each state to superintend the reorganizing of government machinery. He stood ready to recognize such governments as soon as circumstances would permit and hoped it might be soon.

When finally all the South came under the President's military command, all the slaves became free under the operation of the Emancipation Proclamation. They were then a factor to be considered in reorganizing the governments which President Johnson expected to recognize as the legitimate, restored state governments. Was the negro to have a hand in this reorganization? On May 29, 1865, the President issued an Amnesty Proclamation[1] relieving so-called rebels of all disabilities consequent upon their disloyalty and restoring to them all their property except slaves. This proclamation requested those who would seek amnesty to subscribe to a simple oath of allegiance to the national government. It also included a long list of persons who were to be excluded from the benefit of amnesty. They were chiefly men who had been officers of the federal government, congressmen representing southern states, a large number of state officers, and particularly any who had held office in the Confederacy. These men were not permitted to vote in the reorganization of the state governments. The provisional governors took the list in the Amnesty Proclamation to guide them in cutting down the suffrage. As to the free negroes, they were not allowed to vote, because in the absence of any other

[1] Edward McPherson, *Documents on Reconstruction*, p. 9.

logical standard the suffrage laws of the individual states in operation just before the war were used to determine suffrage qualifications for the purpose of reorganization, and these earlier constitutions universally excluded the negro. So it happened that reorganization was to proceed based on a suffrage as it existed before the war, minus those on the proscribed list of the Amnesty Proclamation.

It is just to say of President Johnson that he was in some doubt himself as to who should be electors at this time. And yet there was no valid reason in law why the old state constitutions excluding negroes should not be in full operation. Such an interpretation was strictly consistent with the policy outlined by President Lincoln. The states had never been out of the Union and their legal systems were not dislocated. Now when it was necessary to call the electorate into action there could be no more logical step than to apply the existing law. This was done in spite of the importunities of prominent men in Congress and government circles, Charles Sumner and Judge Chase being conspicuous among them. These men believed that the negro should be given the ballot.

Throughout the year of 1865 the provisional governors carried out the administration plan. The proscribed persons were excluded from participation, and the former suffrage laws were applied with slight modifications. Every attempt was made to live up to the spirit of the administration plan. Naturally there was a great deal of resentment on the part of men who had been heart and soul in the Rebellion, and as these men were the most able statesmen to be found in the South,

the work of these conventions of 1865 was left to less skilful hands. But the tasks before them were not especially difficult. So far as President Johnson was concerned, the only offensive thing to be found in the old constitutions would be clauses recognizing or implying the existence of slavery. They were expected, of course, to conform to the proposed Thirteenth Amendment, which had passed Congress on January 31, 1865, but as that had nothing to do with suffrage the same franchise laws as formerly existed could be perpetuated.

Arkansas was the first state to respond to the administration's invitation to reorganize and return to the fold. A convention met in January, 1864, following occupation by the federal troops. Work proceeded under the provisional governor. The convention declared null and void the former ordinance of secession and prepared a constitution under which it was expected that the state would resume normal functions. The suffrage clause was very brief and restricted the suffrage to whites only.

Next came Virginia, in February, 1864. This convention was composed of delegates representing that portion of Virginia which had remained loyal to the federal government. This was within the Union lines and had not been included in the new state of West Virginia. This convention expected to draft a constitution, be recognized as the legitimate state of Virginia, and resume normal relations with the federal government. It added a little to the old suffrage laws. Negroes were excluded, of course, but the convention listed the persons who later were specifically excluded from the operation of the President's Amnesty Proclamation and undertook permanently to disfranchise

them. In addition, everyone who would vote was required to subscribe to an oath denying any participation in the Rebellion. The only other feature worthy of note is that all taxes assessed after this constitution went in force must be paid if a person wished to exercise the franchise.

Louisiana was the third state to take advantage of the administration's program. In April, 1864, a convention met under the authority of the military commander. No oath and no taxpaying qualification were established and no persons were specifically excluded, which facts exhibited a generous attitude toward the secessionists, whom some of the other states were proscribing. Negro suffrage was not granted.

It was not found necessary to hold a convention in Tennessee, and no new constitution was formed in that state until 1870. But on June 5, 1865, the Tennessee legislature then sitting, which was loyal to the federal government, passed a franchise act[1] stating that every white man publicly known to have entertained unconditional union sentiments since the outbreak of the Rebellion should enjoy the franchise. It specifically excluded those who were in armed rebellion (unless conscripted), those who would not subscribe to an oath of allegiance to the federal government, and also those who were excluded by the President in his Amnesty Proclamation issued the month before. It should be understood that while the list of proscribed persons in this proclamation were very properly excluded from suffrage in organizing the new governments there was no very good reason why the conventions should

[1] Edward McPherson, *Documents on Reconstruction*, p. 27.

perpetuate this disability in constitutions which were intended to be permanent. However, to many men the Amnesty Proclamation seemed to be an invitation to do that very thing. Even at this early date there was a sentiment in Tennessee favoring the extension of the suffrage to the negro. A measure was brought up in the senate in May, 1865, proposing to do this and to apply an educational test after 1875.[1] But it was defeated sixteen to five, as might have been expected. It is worth noting too that Tennessee was one of only two of the southern states which at this period extended suffrage to the foreigner after he had declared his intention of becoming naturalized. South Carolina was the other. Tennessee enjoyed a somewhat different status from the other ten seceding states and stood in better grace with Congress. Tennessee was admitted into the Union once more in July, 1866, two years before any of the others, and without being forced to take the bitter medicine of reconstruction which Congress proceeded to administer in the spring of 1867.

North Carolina also did not hold a constitutional convention in 1865, as did all the other states excepting Tennessee, but simply called a constituent assembly for the purpose of drafting an ordinance prohibiting slavery. This was properly ratified by the people, and it was expected that North Carolina could renew normal relations without further reorganization. This assembly, it may be noted also, adopted a resolution aimed to abolish the taxpaying suffrage qualification for the next election.[2]

[1] *Ibid.*, p. 28.

[2] N.C. Conv., 1865, *Journal*, p. 37.

In September, 1865, Alabama and South Carolina held conventions. Both of them repealed the ordinances of secession and expected to return to the Union under their slightly altered constitutions. No significant changes appear in the suffrage requirements.

In October, 1865, Georgia and Florida held conventions and doctored up their constitutions in the expectation of being received by the Union. Their suffrage laws remained unaltered. Secessionists were not disfranchised as they had been in Virginia and Tennessee, and no new privileges were extended to foreigners. It may be noted that Georgia continued the requirement that in order to vote one must have paid all taxes assessed against him the preceding year.

Texas was the last of the states to seek readmission under the administration plan. It was not until March, 1866, that a convention was held, the ordinance of secession declared void, and a constitution set up which it was thought would be acceptable. They perpetuated the same suffrage provisions.

Mississippi did not attempt a new constitution until 1868, when the reconstruction laws of Congress were in force.

President Johnson was well pleased with the action of these conventions. Nearly all the seceding states had formed new constitutions, and those that had not really did not need them. Slavery was abolished, ordinances of secession were declared null and void, the Union was recognized, and loyal governments were ready to resume normal relations with the northern states. President Johnson felt that the formal work of reconstruction was complete, and that Congress should receive the now

loyal states. On December 18, 1865, he sent a special message to Congress stating that in his opinion North Carolina, South Carolina, Alabama, Georgia, Mississippi, Louisiana, Arkansas, and Tennessee were fit to be admitted, saying that "as a result of measures instituted by the executive . . . . [these states] are yielding obedience to the laws and government of the United States."[1] They had all passed the Thirteenth Amendment except Mississippi, wherein no constituent assembly had yet convened. The President justly thought that he had been very successful to reorganize these states within a year, and he was now reporting his success to Congress.

But now came the break. The executive, perfectly consistent with the plan originally outlined by President Lincoln, had paid no attention to the question of negro suffrage. His theory of secession would scarcely have permitted him to do so. Nothing had occurred to abridge the power of the individual states to fix their own suffrage laws as they always had done. President Johnson made no attempt to intrude where he believed the federal government had no authority. So here were these recalcitrant states knocking at the door of Congress, with President Johnson as their sponsor, most of them with new constitutions and evidences of loyalty, good intentions, and a desire to resume normal relations. But not one of them had provided for negro suffrage. Congress took great umbrage at this fact, staked, and would have nothing to do with Mr. Johnson's protégés.

This attitude of Congress was not wholly unexpected. Johnson knew that a very decided opinion prevailed in

[1] McPherson, *op. cit.*, p. 66.

favor of negro suffrage, and the matter was repeatedly brought to his attention. Time and again he was obliged to declare himself on the issue of negro suffrage and to state his policy toward the southern states in his plan of reconstruction. He did not personally believe in negro suffrage.[1] He did not think that the negro had any political capacity, and abstract theories of right did not concern him. But, what was more important still, he did not believe that he had any power to secure their enfranchisement. This opinion he expressed many times and with considerable force.

As early as June, 1864, in an address at Nashville, he gave out a hint of his ideas as to the suffrage policy that should be pursued in the South.[2] It is significant that while he favored eliminating many of the Confederates, he had no serious thought of injecting the negro into politics. In justifying the position which found expression later in the Amnesty Proclamation, excluding many southerners, he said: "If we are so cautious about foreigners [making them wait for the suffrage] . . . . who voluntarily renounce their homes to live with us, what should we say to the traitor who, although born and reared among us, has raised a parricidal hand against the government which always protected him?" In the attitude implied by this statement he was heartily supported on all sides in the North. But when the actual time came for setting up new constitutions in 1865 he was obliged to declare himself on the negro question as well. His personal opinion is well known, but the insistent clamor from many sources caused him to con-

[1] W. A. Dunning, *Reconstruction, Political and Economic*, p. 38.

[2] McPherson, *op. cit.*, p. 46.

sider at least the possibility of departing a little from his convictions. A letter he wrote to Provisional Governor Sharkey in August, 1865, illustrates well his uneasy feeling about negro suffrage.[1] He said:

> If you could extend the elective franchise to all persons of color who can read the Constitution of the United States in English and write their names, and to all persons of color who own real estate valued at more than $250.00, and pay taxes thereon, you would completely disarm the adversary and set an example the other states would follow.

Now such a move was deliberately inconsistent with his theory and his policy. He did not think that he had any right to foist negro suffrage on the southern states, but he knew that the Republicans of the North demanded it. And it will be observed that in his letter he entertains the hope that an example can be set which other states will follow. He did not want to compromise himself by using coercion in the matter, especially when he did not believe in negro suffrage, but he did seem to hope that the southern states would take the incubus upon themselves. In this, of course, he was badly mistaken.

Not only did he have northern Republican sentiment to deal with, but the more intelligent negroes themselves were active. They confidently hoped that he would do much for them, and a delegation came to wait upon him at the White House in February, 1866, expecting that he would help them to get the suffrage.[2] They apparently believed that negro suffrage could be achieved simply by an executive order, or at least by congressional action. Their arguments were verbose,

[1] *Ibid.*, p. 19. [2] *Ibid.*, p. 53.

and they advanced the usual points about equality, taxation, and representation, government by consent of the governed, etc. The President assumed a confidential manner toward them and tried to convince them first of the unwisdom of granting negro suffrage even if it could be done by federal action, but finally took refuge in the legal theory that he could not help them, for suffrage was a matter which the states must decide for themselves. Unquestionably Johnson had the best of it in spite of the contentions of such men as Sumner and Chase. The logic of his position was unassailable, and it is worth remembering that it was first announced by no less a person than Abraham Lincoln. Suffrage most certainly was a matter for state control, and Congress itself was obliged to admit the fact, because it had to resort to constitutional amendment in order to get its way. The very fact that this was necessary is the best proof in the world that Johnson was right, and he did well to stand by his convictions.

But the President had to fight some very able men. Judge Chase was doing all he could to force negro suffrage on the southern states. But those who were on the ground saw the unwisdom of it, entirely aside from the legal aspect of the case. The commanding military officers were loath to try the experiment, Sherman in particular.[1]

[1] *Official Records, War of the Rebellion*, p. 411. Major General Sherman in a letter to Chase, May 6, 1865, said in part: "I am not yet prepared to receive the negro on terms of political equality for the reason that it will arouse passion and prejudices at the North, which, superadded to the causes yet dormant at the South, might rekindle the war whose fires are now dying out, and by skilful management

Other commanders too had to think seriously about the problem of negro suffrage. Judge Chase took it upon himself to write a letter to Major General Schofield, of the Department of North Carolina, in the spring of 1865, in which he urged the general to revive the North Carolina constitution of 1835, which contained no provision to prevent the negro from voting, and proceed under that constitution instead of the one of later date, which was in force at the time of the war and did exclude the negro.[1] Major General Schofield was in a quandary and wrote to General Grant for advice. He told about having received a letter from Judge Chase and said that his own understanding of the matter was that the federal government had no right to intercede in the matter of suffrage, and that the last constitution, if any, was in force in North Carolina. He could see no justification for reviving the constitution of 1835. He also said that he did not believe that the negroes were at all fit for the suffrage.

Thus matters stood with regard to negro suffrage at the end of 1865. Most of the southern states had new constitutions, but not one of them provided for negro suffrage. During the winter of 1865–66 President Johnson repeatedly expressed himself as of the opinion that these states were fully restored to normal conditions and were rightfully entitled to representation in

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might be kept down. I, who have felt the past war as bitterly and keenly as any man could, confess myself afraid of a new war, and a new war is bound to result from the action you suggest of giving to the negroes so large a share in the delicate task of putting the Southern States in practical working relations with the general government."

[1] McPherson, *op. cit.*, p. 461.

Congress. He thought that there was nothing to stand in the way of southern congressmen taking their places at once. But Congress enlightened him in this manner: "No senator or representative shall be admitted into either branch of Congress from any of said states until Congress shall have declared such state entitled to representation."[1] This is part of a resolution passed in the House of Representatives, February 20, 1866, by a vote of one hundred and nine to four, and it passed the Senate February 21, twenty-eight to eighteen. Here was a formidable obstacle indeed. Congress had the constitutional right to exclude the representatives of a state if it chose so to do.

On April 2, 1866, the President issued a proclamation declaring the Rebellion at an end. Then there was an anomalous situation—the country at peace, every state with a legally sound constitution, but eleven of them being denied representation in Congress. One of the ostensible grounds for this denial was that the said eleven states did not provide negro suffrage in their constitutions. This was an exceedingly flimsy basis for Congress to fall back upon, especially in view of the fact that all but six of the northern states also denied suffrage to the negro. But Congress was in an ugly mood and did not have to be consistent.

Congress refused to recognize the credentials of the representatives from the southern states and declared it to be a legislative function to determine when a state should be admitted. It held that the President had intruded more or less upon the legislature when he proceeded with his plan of reconstruction, and that the

[1] McPherson, *op. cit.*, p. 72.

work which had gone on during 1865 was something of an affront to Congress. So it snubbed Johnson and his states. It was very necessary to do something at once. The nation was at peace and yet one-fourth of the states were not represented. But Congress had a little plan and showed its hand in the summer of 1866. On June 13, 1866, the text of the Fourteenth Amendment was passed.[1]

The first section of the article made sure that negroes were citizens, while the other portions meant that if the southern states excluded negroes from the suffrage, then representation in Congress would be cut down proportionately. A moment's reflection will convince one that such reduction would be very great indeed. This article, then, Congress presented to the southern states which were seeking admission, and said that if they would ratify it as an amendment to the federal Constitution they would be admitted at once. Incidentally it might be mentioned that Congress was once more a little inconsistent. It denied that the states organized by Johnson had any standing whatever, or were indeed states at all, and yet Congress assumed them to be competent to ratify a proposed amendment to the federal Constitution. But, as said before, Congress did not have to be consistent.

[1] It provided that "when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, be in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."

Tennessee acted at once, ratified the proposed amendment, and was readmitted to the Union on July 24, 1866. As might have been expected, however, the other ten states flatly refused to accept such terms, and thereupon President Johnson's plan of reconstruction was utterly routed and his work had come to naught.

Through the fall and winter of 1866 the question of negro suffrage was hotly debated throughout the North; in the South it was not considered debatable. The purpose of the proposed Fourteenth Amendment was obvious enough. Some took it literally and thought that the South ought to be willing to accept a reduction in representation; but most people looked upon it as a step to coerce the South into granting suffrage to the negro. The radicals in Congress were determined upon this issue. Nothing less than full negro suffrage would satisfy them. The works of Senator Charles Sumner, of Massachusetts, provide excellent information concerning the attitude of these radical Republicans. He believed that Johnson had betrayed his party in countenancing any sort of reconstruction without negro suffrage.[1]

In one of his letters Sumner says: "It is impossible to suppose that Congress will sanction governments in the Rebel States which are not founded on the consent

[1] *Works*, III, 315. He tells of an interview which he had with Johnson early in his administration: "I ventured to press upon him the duty and the renown of carrying out the principles of the Declaration of Independence, and of founding the new governments in the Rebel States on the consent of the governed, without any distinction of color. To this earnest appeal he replied on one occasion, as I sat with him alone, in words which I can never forget, 'On this question, Mr. Sumner, there is no difference between us; you and I are alike.'" If Johnson did indeed say this, it is a little hard to reconcile it with his later actions.

of the governed. This is the cornerstone of republican institutions. Of course, by 'the governed' is meant all the loyal citizens, without distinction of color. Anything else is mockery."[1] Thus when Louisiana, which was one of the first states to seek readmission, came up with her new constitution early in 1865, Senator Sumner was fiercely indignant and denounced Louisiana in unmeasured terms. He evidently considered the convention which drew the constitution nothing but a farce.[2] He believed that its business was all arranged before the convention ever met, and that it was dominated by the military authorities, who were unfavorable to negro suffrage and thoroughly undemocratic. He was angry, not only because the constitution did not provide for negro suffrage, but because the negro had no part in organizing the convention and forming the constitution. This was because the old constitution had been used to provide the suffrage law.[3] He used exceedingly violent terms, but it is well to remember that his remarks might just as well have applied to many northern states. If it was the business of Congress to secure negro suffrage as part of the guaranty of republican government, it had a larger task North than it did South.

Men who were bitter about the exclusion of the negro in the reconstructed states were very likely to beg the question when faced with the legal difficulties of the

[1] *Ibid.*, p. 318.

[2] *Congressional Globe,* Second Session, Thirty-eighth Congress, p. 1129.

[3] He said concerning the Louisiana case: "The United States are bound by the constitution to guarantee to every state in this Union a republican form of government. Now when called to perform this guarantee, it is proposed to recognize an oligarchy of skin."

case. When Sumner was asked, from the point of view of constitutional law, if the federal government had the power to deal with suffrage in any state, he quoted the "guarantee republican form of government clause" of the Constitution and said that Congress must guarantee "complete freedom to every citizen, immunity from all oppression, and absolute equality before the law," but he did not say anything about suffrage. In an article which he published in the *Atlantic Monthly*, December, 1865, he evaded the real difficulties of the case in a flood of sarcasm and implied denunciation: "We are gravely told that the national power which decreed emancipation cannot maintain it by assuring universal suffrage." Obviously he labored under a serious error. The national power could not secure emancipation any more than it could secure suffrage. Real emancipation did not come about until the Thirteenth Amendment to the Constitution was ratified (December 18, 1865). The national power that he speaks of, presumably Congress and the President, could not free a single slave, and neither could they give a single man the franchise. President Lincoln's Emancipation Proclamation very much befogged the minds of northerners; he could not and did not pretend to free the slaves of loyal citizens. Now here was another situation calculated to befog the same minds. Congress exercised its technical right of refusing seats in Congress to representatives of the South, and it almost seems as if it could be said that they abused this technical right to coerce states which happened to be at a disadvantage into doing a thing which Congress never would have thought it possible to force upon a loyal state. Negro suffrage

had to come in so far as it did come by means of a constitutional amendment. It was not through action of the national government that negro suffrage came to be. Congress blustered aplenty but in the end had to appeal to the people of the states to pass an amendment in order to secure what was wanted. But in the meantime it was necessary for Congress to deal with the ten refractory states; and, as said before, the technical right to exclude representatives provided the necessary lever to enforce what they could never have secured under normal circumstances.

Congress proceeded on the assumption that the states really had left the Union, and that the government of the territory which formerly comprised the southern states was now a federal function. This theory was not consistently lived up to, but no opprobrium should attach to Congress on this score, for to have followed out such a doctrine literally would have been a very difficult matter. Congress tacitly recognized the *de facto* state governments at every turn, but supported the fiction about conquered territory in order to give some color of logic to the coercive measures it now took against the South. Judge Chase provided the best legal support Congress could boast of when he elaborated the doctrine that, as the states were non-existent and the federal government was in possession of the territory, federal law only could prevail there. In view of real conditions, however, this was not much more than a legal fiction.[1]

When Congress opened in December, 1866, the actual details of organizing in the South governments that would be acceptable was the most important business

[1] J. F. Rhodes, *History of the United States*, V, 524.

at hand. The Republicans were pledged to a negro-suffrage policy. Blaine declared the fact in Congress and demanded the incorporation of negro-suffrage clauses in all the southern constitutions.[1] It is interesting to note, however, that while the Republicans favored negro suffrage for the South and had come to look upon it as a natural attribute of abolition, the state elections in the following year resulted in Ohio, Michigan, Minnesota, and Kansas all turning down negro suffrage at the polls.[2] The average Republican, it would seem, wanted negro suffrage, but he wanted it in the South.

It has been pointed out by Mr. Blaine that at this time there were three ways open for Congress to deal with the South.[3] The first was to recognize the governments set up under Johnson's direction during 1865. This would have been to leave to these states the exclusive control of suffrage, such as every other state enjoyed; but in the opinion of the radical northerner this would have been to give up those things for which the war had been fought, and would fail to punish the offenders. A second way would have been to maintain for an indefinite period the military control then existing. But this suggestion was utterly repugnant to American ideals, North as well as South. The remaining plan was to take advantage of the position they were in and force the southern people to surrender themselves completely to negro domination before they could be admitted to the Union. This is what was done; it was an unfortunate policy and could not last, but Congress

[1] *Congressional Globe*, December 10, 1866.

[2] Dunning, *Reconstruction, Political and Economic*, p. 125.

[3] J. G. Blaine, *Twenty Years in Congress*, II, 262.

was determined and set about the business in a thoroughgoing manner.

On March 2, 1867, there was passed in Congress an act "to provide for the more efficient government of the Rebel States."[1]

Certain portions of this act declared no government to exist in the ten states. This was a deliberate refutation of the facts, but Congress had recourse to the fiction in order to justify its procedure. The act also divided

[1] It is not possible to explain the contents and purpose of this act better than by quoting it in part: "Section 5. When the people of any one of said rebel states shall have formed a constitution of government in conformity with the constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of such state, twenty-one years old and upwards, of whatever color, race, or previous condition, who have been resident in said state for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law; *and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates;* and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates; and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same; and when such state by a vote of its legislature elected under said constitution shall have adopted the amendment to the constitution of the United States, proposed by the Thirty-ninth Congress and known as Article Fourteen, and when said article shall have become a part of the constitution of the United States, said state shall be declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom, on their taking the oath prescribed by law; and then and thereafter the preceding sections of this Act shall be in operation in said state: Provided, That no person excluded from the privilege of holding office by said proposed amendment to the constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel states, nor shall any such person vote for members of such convention."—McPherson, *op. cit.*, p. 191.

the South into five military divisions. The practical effect of the act was, of course, to overthrow the governments which Johnson had set up. But the points which are of particular interest in this work are to be found in the section quoted: first, negroes must be admitted to the suffrage when elections for delegates to the constitutional convention were held; secondly, the new constitutions must provide permanently for negro suffrage; and thirdly, the newly organized states must ratify the proposed Fourteenth Amendment. Never before or since in the history of the United States has Congress attempted to lay such severe conditions upon a state entering the Union. Congress fully realized that it was impossible to force a full-fledged state into providing for negro suffrage, and therefore it chose to take advantage of their position to insure negro suffrage before the states were admitted, for Congress was determined upon negro suffrage—*for the South.*

So far as legal rights go there is no doubt that Congress had the power to insist upon negro suffrage in the election of delegates to state conventions, and if it can reasonably be presumed that Congress would have maintained a similar policy toward a really new territory seeking admission and not laboring under the stigma of rebellion, this provision of the law may be considered a turning-point in the national policy as regards the admission of new states and need not excite opprobrious comments. But the next point mentioned, the clause requiring the new states to make provision in their new constitutions for negro suffrage, had no justification in either theory or law. There would be no point to such a proposition unless it were intended to be permanent, and indeed

Virginia, the first state to proceed under the act, was obliged to provide in her constitution that it should never be amended so as to exclude the negroes. Manifestly, if the constitution of a state contained any clause whatever which the state itself was not competent to alter (in conformity to the federal Constitution), the rights of that state would be distinctly inferior to the rights of other states. Congress has not a vestige of power to dictate what shall be contained in the organic law of a state once the state is a full-fledged member of the Union. The only barrier standing between the unlimited power of a state and the making of its organic law is the federal Constitution. At this time the Constitution said nothing about the suffrage a state must maintain, and hence a full-fledged state would be entirely free in the matter.

Again, it is interesting to consider the philosophy which implied that a creating power is competent in fact, not in law, to put a permanent limitation upon its own power. Any sanction higher than the creating power, and therefore any limitation of power, must emanate from another source. Congress recognized that it did not have this power to limit state action when it asked the states to limit their own power. Philosophically speaking, it was demanding that the states do that which in the nature of things cannot be done. A very great deal has been written about the legal aspects of this situation, and cases have been tried in court about it. But it does seem as if the simple philosophical proposition ought to settle the question. An unamendable constitution is an impossible thing, unless it be maintained by some power other than that which

created it. If by the very terms of the proposition there be no other power in the field, the creating power cannot possibly recognize any limitations even if it would; and all the laws in the world could not alter the relationship. And yet writers of organic law have frequently presumed to limit the very power of which they are the mouthpiece, without for a moment recognizing any other sanction. And inevitably they fail.

The remaining problem then for the legalists to struggle with is this: No matter how foolish or impotent the clause may be, has Congress the right to demand that it be included in the constitutions of incoming states? Congress has the power to say when a state shall be admitted to the Union. Presumably then there is no limitation on the conditions that may be prescribed, and thus indirectly Congress surely was competent to require the southern states to incorporate this suffrage clause in their constitutions. But nothing short of an amendment to the federal Constitution could oblige the states to retain the suffrage clause once they were admitted to full statehood.

As to the third point mentioned, with regard to the Fourteenth Amendment, it is difficult to see the object of the clause. The ratification of the amendment by the southern commonwealths before they became full-fledged states once more could have no weight whatever. If the legislature of Alabama, or the people themselves in constituent assembly, could not speak as a state in the Union, they might as well not speak at all so far as ratifying an amendment to the federal Constitution is concerned. And if they became fully competent to speak as a state, there could be no power whatever competent to dictate how they should speak.

As might have been expected, President Johnson vetoed the act of March 2, saying, what was obviously true, that adequate governments were already operating in the southern states.[1] But he was forced to accept the humiliating position of seeing all his work go for naught in spite of his veto.

But when the bill came to be actually in force, the question naturally arose: By what authority did Congress direct the organization of new governments in the South? It was the same question which had been flung at Johnson in 1865, and it has always remained unanswered. Some congressmen invoked as a flimsy justification that clause of the federal Constitution requiring Congress to guarantee a republican form of government in the states. But there was no historical foundation for the argument that negroes, or anybody else, must be included in the suffrage in order to establish a republican form of government. At the time the federal Constitution was put in force, and many years thereafter, not only negroes, but many others, were excluded in most of the states.

From a perusal of the records of the convention of 1787 it would seem that the framers of the Constitution did not know themselves exactly what they meant by a republican form of government.[2] Mr. Madison seemed to believe that all the federal government should do was to help support the legitimate constitution of a state if support became necessary. What they really sought to guard against in all probability was the possible inception of monarchical institutions in some state. Randolph's vague suggestion that "no state be at liberty

[1] McPherson, *op. cit.*, p. 167.

[2] Elliott, *Debates on the Federal Constitution*, V, 333.

to form any other than a republican government" was exceedingly indefinite. They knew what they did not want to happen, but they did not know just how to guard against it. Probably there was no need of a safeguard in any case. But certain it is, however, that they never thought of interpreting republicanism in any such narrow terms as suffrage provisions. Each state put its own limitations on suffrage, and the convention had no thought of dictating other limitations.

The act of March 2 required supporting legislation. Just who could vote for delegates to the constitutional convention? To clear up this difficulty Congress passed an act on March 23, 1867, which provided for registration in the South. Only those who were registered under this act could vote for delegates.

In very simple phrases this act undertook to enfranchise all the negroes simply by the easy expedient of not excluding them. Certain southerners were excluded from registration, but neither this act nor the act of March 2 required that the southern states should perpetuate this exclusion clause in their new constitutions. Some of them did and some were more generous, as will be seen later.

Certain sections of the act of March 23 provided that in order to be valid one-half of the registered voters must vote at an election. In order to obstruct progress, southern extremists who were not excluded decided to register and then stay away from the polls. But they might have anticipated what later did happen: Congress passed an act on December 18 following, whereby a majority of those voting would carry an election. The President let the bill lie on his table and it only became law by lapse of time.

Vast numbers of southern whites were excluded from the suffrage—many of the best were excluded by the acts of Congress, many others voluntarily stayed away from the registration offices. And more vast were the numbers of the negroes included in the registration, although some apathy was manifest in different portions of the South, and various expedients were adopted to stimulate their registration. A more or less effective step in this direction was that taken by General Pope. He had charge of the third district, and in making up the registration boards he always included a negro.

Indeed it was sometimes difficult to get white men to sit on these boards on account of the inflamed public opinion. As a result the registration was rather poorly done. Naturally the whole situation was calculated to excite the indignation of the southerner. The fact of military rule was humiliating and yet it might have been more or less acceptable—for there was nothing necessarily offensive in rule by honest military commanders—but general negro suffrage accompanied with wholesale disfranchisement of southerners made the situation quite intolerable.

At this point it is well to call attention to the fact that northern Republicans were not without ulterior motives in seeking to enfranchise the negro. The principle of negro suffrage was popular, of course, but the Republican politicians were very likely to have something more in mind than justice to the black man when they fought to gain the suffrage for him. They wanted to make sure of Republican majorities and permanently cripple the Democratic party. As early as December, 1866, Mr. Blaine complained in Congress about the possibility of the southern states returning with the same

measure of representation enjoyed by them previous to the war—largely based on a non-voting population.[1] He said, "If the southern states are to be deprived of their undue share of representatives, based on their non-voting population, they should be deprived of them at once, and not be admitted, even temporarily, with the old apportionment." He seemed to be more intent on reducing their representation than on securing suffrage for the negro. But later on the latter view to the same end became more popular. It was soon evident that a large negro electorate would give the Republican party enormous prestige, and many congressmen were exultant over the prospect.[2]

In April, 1867, Charles Sumner, in writing to the editor of the *Independent*, urged the necessity of permitting the negroes to vote throughout the North as well as in the South.[3] Negroes everywhere would swell the Republican ranks. He had in mind the coming Presidential election and knew that he could depend upon the negroes in the North. But aside from this ulterior motive his point was surely well taken. If there was any sound reason for extending suffrage in the South, surely the northern negroes ought to vote. But Congress could not help them.

And when, later in the year, time pressed the Republicans, they altered the bill providing that one-half of the registered voters were necessary to validate an election and made it a majority of those voting. This

[1] *Congressional Globe*, Second Session, Thirty-ninth Congress, p. 53.

[2] *Ibid.*, First Session, Fortieth Congress, p. 144.

[3] *Pol. Sci. Quar.*, IX, 682.

trouble had been anticipated long before on the floor of Congress, where it was pointed out that while vigorous efforts would be made to get all negro men registered not nearly so many would appear at elections.[1] It would be much easier to dissuade simple negroes from voting than to dissuade them from being passively registered. Registration required little energy or thought.

Before leaving Congress to devote attention to the southern state conventions, it may be mentioned that it showed good faith in seeking negro suffrage by enfranchising the negroes in the District of Columbia and in the territories. The bill enfranchising the negro in the District of Columbia was vetoed by the President on January 7, 1867, and it is very significant that the reason he gave for his veto was that a referendum on the subject of negro suffrage in Washington had resulted in a vote of six thousand five hundred and fifty-six against thirty-five in favor.[2] However, the following day, adhering to their policy of guaranteeing republican government, Congress carried the bill over the President's veto.

The act enfranchising negroes in the territories was passed on January 10, 1867, and was expressed in these brief terms: " . . . . there shall be no denial of the elective franchise in any of the territories of the United States, now or hereafter to be organized, to any citizen thereof, on account of race, color, or previous condition of servitude. . . . . "[3]

[1] *Ibid.*, First Session, Fortieth Congress, p. 144.

[2] *Ibid.*, First Session, Thirty-ninth Congress, Part I, p. 133.

[3] McPherson, *op. cit.*, p. 184.

In the fall of 1867 the southern states were beginning to hold their constitutional conventions under the reconstruction acts. The bitter medicine which these conventions had to swallow was the proposed Fourteenth Amendment and the granting of negro suffrage. In a sense the Fourteenth Amendment was a clumsy means of securing the negro suffrage. In spite of the action each state was required to take in granting negro suffrage in its own constitution, Congress was not satisfied that it would last. It could not secure just what it wanted, directly on its own authority, and so by means of the Fourteenth Amendment sought to penalize any state which failed to keep faith in the matter of the suffrage clause. Some men, of whom President Johnson was one, accepted the Fourteenth Amendment at its face value, bona fide, and no doubt expected some of the states later on to accept the alternative and consent to a decrease of representation as the price for negro disfranchisement. But no southern state ever considered this alternative seriously, and thus it was that the Fourteenth Amendment operated merely as a club to coerce the South into maintaining negro suffrage. It was this amendment which the conventions in the fall and winter of 1867–68 were obliged to accept.

Another consideration before the conventions was the civil status of the negro. The suffrage he must have. But Congress had anticipated disabilities being placed upon the negro, and on April 9, 1866, had passed a Civil Rights Act.[1] The most essential provision was that "all persons born in the United States and not subject to any foreign power, excluding Indians not

[1] U.S. Comp. Stat., 1901, p. 1268.

taxed, are declared to be citizens of the United States." President Johnson had vetoed the bill largely because he considered it unnecessary. He thought that there was no reason to doubt the fact which the bill expressed, and that no new legal relationships were created by it. Both this act and the Fourteenth Amendment expressed the same idea as regards citizenship, and that was simply the common-law idea. If a person is born in the United States and subject to its jurisdiction, he is a citizen of the United States, and this has always been true since the adoption of the Constitution.[1]

The Civil Rights Bill and later the Fourteenth Amendment simply gave emphatic expression to this old common-law rule. The irritating thing about it was that it meant in plain language that negroes were citizens without taking oaths, passing literacy tests, etc. They actually were citizens simply by virtue of being born. A purely national conception of citizenship was attained, which broke away from any attempts to tie up the negro's status with the rights he might be permitted to enjoy in the state of his residence. And even the power of the states was compromised, for the negro automatically became a citizen of the state of his residence and entitled to the privileges attaching thereto.

Thus, with the Reconstruction acts, bolstered up with the Civil Rights Act and the Fourteenth Amendment before them, the conventions went to work.

Two things are especially to be considered regarding the character of these conventions: the first is that large numbers of negroes were present in the assemblies, and the second that they were very largely under the

[1] Van Dyne, *Citizenship of the United States*, pp. 7–12.

dominance of the district military commanders. These facts account for the apparent docility of the conventions which the temper of the South would hardly lead one to expect.

Alabama was the first of the ten states to organize a convention. It met in Montgomery in November, 1867. The committee appointed to draft a suffrage clause presented a report which in most of its essentials was adopted. This report aimed to enfranchise all male citizens and foreigners who had declared intentions to become citizens. They proposed to disfranchise all who had practiced barbarities on captives in the Civil War, those who refused to vote either one way or the other on the constitution when submitted, and those who refused to subscribe to an oath repudiating secession doctrine and expressing approval of admitting negroes to full political rights.

The minority report of the convention was very much more conciliatory in its tone. It left out the disfranchising clause and merely required a general oath of allegiance to the United States government. As this was one of the first conventions called under the Reconstruction acts, the proposals entertained there are well worth considering. There was an evident desire to make it difficult for the Confederates to exercise the franchise. Many delegates wished permanently to disfranchise all who had been excluded by the Reconstruction Act of March 23. This would have meant wholesale disfranchisement, and there was no cause to believe that reasonable statesmen in the North expected it. They merely wanted these conventions to work unhampered by Confederate sympathies.

A good example of attempted persecution was the following proposal:

> No person shall be deemed a qualified elector, or permitted to vote in this state, at any election under the constitution unless he will take and subscribe an oath that on the Fourth Day of March, 1864, he preferred the government of the United States to the government of the so-called Confederacy, and would have abandoned its cause had he had the opportunity to have done so.[1]

Another proposal was to exclude every person who had participated in the Rebellion, unless he later removed the stigma by assisting in reconstruction. A great many special disabilities were aimed at those who were members of the legislature of 1861, those who were members of the Confederate Congress, those who voted for conscription, etc. However, all these attempts can be looked upon as merely the expression of a bitter feeling still remaining after the war, and probably are not of much significance in foretelling the policy of suffrage later to prevail.

But it is interesting to note how quickly measures looking toward the disfranchisement of the negro came up. An amendment was suggested, although it received but little support, that after 1870 a literacy test should be put in operation requiring all voters to be able to read and write. Surely this was an omen of future developments.

As it finally stood, this constitution granted universal male suffrage to citizens and to foreigners who declared intention. It prescribed an oath of allegiance involving a repudiation of southern doctrine. It specifically excluded those who had violated the rules of civilized

[1] Ala. Conv., 1867, *Journal*, p. 47.

warfare, those excluded by the Fourteenth Amendment, and, most important, those who were not permitted to vote for delegates to the conventions, unless they had openly assisted in reconstruction.

In December, 1867, Louisiana held a convention. This convention drew a constitution which included in the suffrage all male citizens but failed to include foreigners who declared intention. Article 99 excluded those who held office for one year in the Confederacy, those who registered as enemies of the United States, those who led guerilla bands, those who wrote or spoke against the United States, advocating treason, and any and all who signed an ordinance of secession. These disabilities could be removed by individuals who would take oaths repudiating former Confederate sympathies, or who would actively assist in reconstruction. And as for the exclusion clause applying to officers in the Confederacy, the legislature was to be competent to remove this disability by a two-thirds vote at any time.

No more conventions were held until the new year arrived. In January a convention assembled at Charleston, in South Carolina. A campaign was launched at once to prevent the putting of any provision in the suffrage clause that would necessarily involve permanent and arbitrary exclusion on the face of it. It was urged that all disabilities which involved discriminations which men could never overcome of their own action should be abandoned. Such a policy would prevent the disfranchising of Confederates and those mentioned in the Reconstruction acts. Such sentiments as these quickly brought the convention to the consideration of literacy or property tests. The com-

mittee reported in favor of applying a reading and writing test in 1875, and debate in convention on the matter of suffrage was largely confined to this proposition.

Indignant opposition appeared at once. It was pointed out that although the committee would postpone the operation of the test for seven years, it was very unjust to the negro. It was said that it would take more years than seven to establish a school system throughout the South that would embrace the negro population. Charleston was the only city in the state having a comprehensive system at that time.[1]

In view of the committee's report and the spirited support it received, the final vote on the matter is surprising. The literacy test was snowed under one hundred and seven to two, with ten not voting.

There was some debate on whether foreigners should be allowed to vote after declaring intention; the need of encouraging immigration was pointed out, but the convention did not support the move.

As the constitution finally stood, it was one of the simplest of all. It enfranchised all male citizens "without distinction of race, color, or former condition." No one was specifically excluded, although an unnecessary phrase declared that none should vote who were excluded by the United States Constitution.

Arkansas held a convention the same month. It was soon evident that a less generous policy was to be followed here. Severe measures excluding southern

[1] S.C. Conv., 1868, *Proceedings*, p. 49. One delegate said with much point, "I think it would come with bad grace from any individual in this state, who has helped to deprive men for two centuries of the means of education, to demand that in seven years all unable to read should not be allowed to vote."

sympathizers were introduced. Yet a considerable number of men were opposed to perpetuating the discriminatory franchise rules of the Reconstruction acts and were in the difficult position of trying to make sure that their constitution would be accepted if a broader franchise were granted.

A resolution was introduced aiming to exclude all obstructionists who opposed the reconstruction policy, and the novel expedient was suggested of automatically disfranchising in the future every person who gave a negative vote on the proposed new constitution. How these persons were to be detected was not mentioned.

As finally adopted, the constitution contained a few severe restrictions, but they were tempered with a clause which made it possible for most men to escape from them. An oath of allegiance involving repudiation of Confederate doctrines was required. Those disqualified in the state whence they came were excluded, and also those who violated the rules of civilized warfare. Most important was the clause excluding all who were not permitted to vote for delegates to the convention, but these might remove such disability if they openly assisted in reconstruction.

In the same month, January, North Carolina held a convention and drafted a constitution which specifically excluded nobody except "all who deny the being of Almighty God." A simple oath of allegiance was also required.

Florida, also in January, prepared a new constitution, and she too failed to lay any disabilities upon the Confederates. All that was required was a simple oath of allegiance.

In Georgia a convention met in March. The suffrage committee reported in favor of disqualifying the men who were not permitted to vote for delegates to the convention only so long as the federal rules were in force. An amendment was proposed to require ability to read after 1873, but was turned down, sixty-eight to forty.[1] A forecast of measures adopted a score of years later is seen in the proposal to require of voters "that they can read and write, and understand the moral obligation of an oath, and shall own and possess, in his, or their, own right, $250.00 worth of real estate, and shall have paid all legal taxes for the year preceding election."[2] But as finally adopted the constitution contained no disabilities.

Thus it happened that in the spring of 1868 seven of the ten states were ready with new constitutions. They were all acceptable to Congress and were all admitted to the Union in June, Arkansas on the twenty-second, the others on the twenty-fifth.

Those still outside were Mississippi, Texas, and Virginia. Virginia had held a constitutional convention as early as July, 1867, and all this time the people had been bickering over the franchise provision. A most offensive clause had been inserted which disfranchised certain-named officers who had held office in the southern states or had represented such a state in federal office. It was even more stringent than the Reconstruction acts themselves and excluded a long list of petty officials: mayors of towns, recorders, aldermen, coroners, inspectors of flour and tobacco, constables, and county

[1] Ga. Conv., 1868, *Journal*, p. 279.

[2] *Ibid.*, p. 280.

surveyors. The people of the state refused to countenance such provisions and would not ratify the constitution so that the state could go to Congress with it. However, in April, 1869, President Grant proposed that the disfranchising clause be the subject of a separate vote, and this was done. Then the constitution was passed without difficulty, and Virginia was admitted to the Union on January 26, 1870.

Similar difficulties arose in Mississippi and Texas, and finally the radicals in those states had to reconcile themselves to giving up disfranchising clauses in their own constitution and be satisfied with the Fifteenth Amendment. Mississippi was not admitted until February 22, 1870, and Texas on March 30. Then once more the Union was complete.

On the same day that the last seceding state, Texas, returned to the Union, the Fifteenth Amendment was declared to be in force, March 30, 1870. This article is very simple in its terms, merely forbidding any state to deny the franchise on account of race, color, or previous condition. Congress had left no stone unturned to secure suffrage for the negro. Reconstruction was complete, the war amendments were all properly ratified and in force, and a new era in the history of suffrage was at hand.

CHAPTER VIII

DISFRANCHISING THE NEGRO

The immediate results of negro suffrage were somewhat startling. Representative assemblies are not likely to be on a much higher plane of intelligence than the constituencies electing them. Men who staunchly defend an abstract theory through thick and thin are seldom much perturbed at unfortunate results following the practical application of their theory. But in the case of negro suffrage, events immediately following general enfranchisement were calculated to shatter the faith of the most determined advocate. Rarely has it been desirable in this work to dilate upon the results of a new extension of suffrage. Practically all such extensions come to stay, and serious efforts at reaction scarcely gain the least attention. But here the case was different. The misery of the South in the decade following the war was largely traceable to negro suffrage and, what is more significant, laid the foundation for successful attacks against the whole policy of negro suffrage. The spectacle of the South during those years caused sober men to wonder if democracy was a failure and if true democracy did really involve universal suffrage. And if it did, was not the price paid altogether too great when measured in terms of political vice, corruption, villainy, and outrage? As things turned out it seemed that the term "democracy" was no less a mocking word when applied to southern commonwealths dominated by thieving,

irresponsible, hopelessly ignorant blacks than it was in earlier times when those same blacks were slaves.

An account of this riot of corruption cannot be given here. The negroes, aided by vicious carpetbaggers from the North, got possession of the state legislatures, and the powers of the government were prostituted to most unholy purposes. Most of the wrongdoing consisted in various methods of pilfering the state treasury and exploiting available resources. But every evil deed simply made more certain the coming of that reaction destined to drive the negro from the polls. His enfranchisement had been secured by artificial means and not by the normal process of building up a popular support. And how very significant it is that such artificial methods were unable to establish a condition that would endure!

Happenings in Washington, D.C., in the early seventies did not help the cause of negro suffrage.[1] There had been gross mismanagement in the business of beautifying Washington along the line of a plan fostered by an overambitious board of public works. Invasion of property rights and great extravagance were much complained of. Such high-handed practice could only be supported by an irresponsible electorate, such as the negroes, who solidly backed up anything Republican officers chose to do. The leading member of the board of public works, A. R. Sheppard, was a friend of President Grant's, and the negro asked no more about him. Congress took advantage of the occasion to change the form of government in Washington in 1874, and by this step everyone living there was disfranchised. It is not fair to attribute this change entirely to the bad results

[1] Appleton, *Annual Cyclopedia* (1874), p. 268.

of negro suffrage, and yet it is significant that less than five years after Congress in a pompous, self-righteous manner had sought to make Washington democratic by establishing universal suffrage it found it desirable to withdraw all suffrage rights. The incident was looked upon as a severe setback to negro suffrage.[1]

It is not proper to lay all the unfortunate results of negro suffrage at the door of the negro. His gullibility and ignorance were frequently exploited by designing whites with ulterior motives. It has been pointed out before that many politicians were no doubt seeking the good of their party and their own political future rather than abstract justice for the negro.[2] Respectable statesmen, of course, did not countenance the gross corruption in the southern legislature, but they were slow to disapprove the actions of faithful henchmen such as the negroes proved to be.

But while negro suffrage was raising havoc in the South the courts were examining the war amendments in order to find a proper interpretation of the suffrage provisions contained in them, and it were well to consider some leading cases.

The Fourteenth Amendment in express terms forbade any state to abridge the privileges of citizens of the United States. Claiming that a right to vote at federal elections was a privilege attaching to United States citizenship, a woman in New York cast a vote for congressman. The state of New York did not provide

[1] *Proc. Am. Pol. Sci. Assoc.*, II, 158.

[2] A. B. Hart in *Proc. Am. Pol. Sci. Assoc.*, V, 2. Page 153 fixes on Thaddeus Stevens as a man with ulterior motives, caring more for party success than for the rights of the negro.

for woman suffrage, and hence she had violated the New York state law. The case was carried to the federal courts in 1873 on the ground that the state election laws were invalid because they violated the clause of the Fourteenth Amendment forbidding the abridgment of privileges of United States citizens. But her case fell to the ground when the Supreme Court held that the right to vote was not a privilege necessarily accompanying United States citizenship.[1] The right of suffrage never was guaranteed by the Constitution and the Fourteenth Amendment does not so guarantee it. The Fifteenth Amendment deals more directly with suffrage by protecting a citizen against discrimination at the polls on account of race or color; and it is pointed out by the court that if the Fifteenth Amendment had mentioned sex as well as race and color the state laws discriminating against the female sex would be invalid.

The same issue was brought up in a Missouri case in the following year, 1874, and the court dealt with it in such a manner as to leave no loophole for trying to get a different interpretation.[2] A woman sought to register in Missouri, where the law provided only for male suffrage. She maintained that the Fourteenth Amendment forbade any state to abridge the privileges of a United States citizen, and that she was a citizen and the elective franchise a privilege of citizenship. Hence Missouri violated the Constitution by denying this privilege. The court specifically acknowledged this woman to be a citizen and thus entitled to all the privileges and immunities guaranteed by the Constitu-

[1] *United States* v. *Anthony*, Fed. Cases 14459.

[2] *Minor* v. *Happersett*, 21 Wall 162.

tion. But what is most significant, the court declared that the Fourteenth Amendment did not add to these privileges and immunities. The right of suffrage never had been considered such a privilege and the Fourteenth Amendment did not alter the situation. The court further pointed out that the language of the Fourteenth Amendment itself provided the best possible evidence in support of the contention that the right of suffrage was not intended to be established, for it contemplates the possibility of reducing the suffrage in the various states and provides for certain action in that event.

These two cases completely disposed of the false argument that the war amendments conferred suffrage upon anyone. No new privileges were added to those already involved in United States citizenship.

But while the court was calmly disposing of this aspect of the suffrage question, raised in states where reconstruction had not been applied and in cases not involving negroes, events were rapidly transpiring in the South which brought the suffrage question sharply before the courts in a different manner. It is necessary to trace at least briefly these events.

The process of redemption began almost as soon as the reconstructed governments were put in operation. Southerners were determined to redeem their states from black control, and within a decade after the war all the state governments were back in the hands of white men.[1] This necessarily involved a more or less forcible exclusion of the blacks, certainly discountenanced by the war amendments; but the process went on nevertheless.

[1] *Yale Law Review*, XIV, 41.

Even before the end of the war it is significant that in West Virginia all the political troubles and bitter strife were between the whites and largely concerned the policy of excluding southern sympathizers from the polls.[1] The negro was not a factor even in spite of the manifest tendency of congressional policy to make him such. But there never was a time in West Virginia when negro suffrage was popular even with Republicans. They side-stepped and merely supported it as a national issue. The Democrats won a sweeping victory in 1870 by hotly condemning the Fifteenth Amendment and negro suffrage and demanding the abolition of disability against secessionist whites.

Exactly the same process was at work in the strictly southern states, where a little more time was needed to recover from the shock of reconstruction. But finally the white men won control in every state.[2] White ascendancy was the more easily accomplished inasmuch as Congress had passed an Amnesty Act, May 22, 1872, which for the most part removed all the disabilities contained in the Fourteenth Amendment on those who supported the Confederacy.

However, in order to maintain ascendancy it was desirable and expedient to keep the negro from exercising the suffrage. This the southerner set out to do by various interesting methods. The activities of the

[1] *Yale Law Review*, XIV, 41.

[2] Appleton makes a record of the date on which each of the southern states returned the Democratic party to control and sent white men to Congress: Georgia, 1870 (p. 341); North Carolina, 1870 (p. 553); Tennessee, 1870 (p. 710); Virginia, 1870 (p. 746); Texas, 1873 (p. 739); Alabama, 1874 (p. 17); Arkansas, 1874 (p. 51); Mississippi, 1875 (p. 517); Florida, 1876 (p. 304); Louisiana, 1876 (p. 493); South Carolina, 1876 (p. 304).

Ku-Klux have been immortalized in book and play. Less dramatic were the practices of brute violence and intimidation, clever manipulation of ballots and ballot boxes, the deliberate theft of ballot boxes, false counting of votes, repeating, the use of "tissue" ballots, illegal arrests the day before election, and the sudden removing of the polls. All the many expedients that clever men could devise were used to render ineffective the attempted voting of the negro. By one means or another the desire of Congress to secure suffrage for the negro was utterly defeated.

The South sought to justify this process of exclusion. The firm conviction grew and crystallized in the minds of the southerners that the negro, being of an inferior race, suffered under a natural incapacity to perform political duties.[1] Here is found the beginning of the negro problem as it exists today. The real objection to negro suffrage was not a dislike of an ignorant electorate but a keen apprehension that negroes enjoying political power would utterly demoralize the state. Some leading negroes have concurred in this belief and have urged their fellows not to insist upon exercising political power.[2] They emphasize the evil results of negro suffrage and active participation in politics and deplore the fact that good laborers and artisans are spoiled to make wretched politicians. Another purely utilitarian consideration from the negro's point of view is that he would probably gain more in the long run by submitting to white control.

[1] *Pol. Sci. Quar.*, XVIII, 484.

[2] G. R. Riley, *Philosophy of Negro Suffrage*, pp. 34–55.

Another argument in defense of the policy of driving out the negro is developed by certain writers.[1] It is said that many of the better element in southern states wanted the negro disfranchised in order that they might overcome the corrupt group of professional politicians in their own party. It was absolutely necessary for all whites to stand together if the negroes voted, in order to avoid the menace of black control. But the solid white group was manipulated by corrupt politicians. If the negro were disfranchised, the better element of whites could cope with these undesirables and clean up politics. Until that time the need of self-preservation required them all to stand together. And a very significant outcome of the suppression of the negro vote was the break from white bosses. The better class no longer was obliged to submit to corrupt domination in order to save itself from the negroes.

Champions of the negro, on the other hand, pointed out that the men of the South had failed to prove that they were the negro's best friends. It was said that the negro needed the suffrage in order to defend himself from persecution. The South was his best friend only when he consented to be a virtual slave. A comment on the activities of white men in driving out the negro vote occurs in a paper of the *American Negro Academy* and is summed up in this way: "The significance of the undoing of reconstruction is that . . . . it marked the arrogant reassertion of the malignant and desperate purpose of the southern oligarchy, trained in the absolution of slave-mastery, to despoil the negro of the rights of citizenship, and to reduce him to a state of serfdom."[2]

[1] *North Am. Rev.*, CLXXV, 534; *Pol. Sci. Quar.*, XXI, 185.

[2] No. 6, p. 13.

In fact, the war had scarcely ended when southern states began to manifest their friendly attitude toward the negro and pass legislation for his special benefit.[1] In Florida in 1866 negroes could be arrested if they had no visible means of support, or led an "idle, immoral, or profligate course of life." They could be whipped, put in pillory, and bound out in service by the courts. In Virginia any justice of the peace could issue a warrant for a negro to be brought before him, and if the court found him to be a vagrant he could be bound out to service. A vagrant was one who lived idly and refused to work for current wages. In Louisiana any justice of the peace could have a negro brought before him, and if the court was satisfied by "competent testimony" that the fellow was a vagrant he could be bound out.

Of course such acts as these did not prevail after the reconstruction governments were in control, but when the whites got back in power the same spirit manifested itself in somewhat less offensive and more covert ways. The inferior courts of justice, the pettiest officials, and those representatives of the government with whom the negro was in constant and intimate contact were much inclined to persecute and discriminate against him in all his petty conflicts with the state, and all this chiefly because he came to have no power at the polls. But the question arises at once: How did the South succeed in excluding the negro from the polls in view of the war amendments? Did these illegal practices persist and effectively achieve their end?

In brief, they did succeed. They succeeded for twenty years or more or until the southern states

[1] McPherson, *Documents on Reconstruction*, p. 39.

undertook to revise their constitutions and make the exclusion of negroes really legal. However, these extra-legal or illegal practices could not have persisted had it not been for the attitude of the federal courts. Tribunals very early began to exhibit a tendency to keep "hands off" the southerners and not force the issue with them. All the burden of proof was laid upon the negro to show that he was being denied a right, and the courts took advantage of technicalities and ambiguities to make the negro's problem all the harder.

In Kansas in 1870 a case came up in which it appeared that a large number of negroes were not admitted to the polls.[1] In bringing their suit they set forth the essential facts concerning their qualifications as electors, stating that they were twenty-one years of age and had lived in Kansas six months. But they neglected to state that they had lived in the ward thirty days, a fact which had nothing to do with the case and which nobody questioned. Yet their case was thrown out on this technicality. It was obvious that the court did not want to investigate the real merits of the case.

In 1871 a case came up in South Carolina.[2] Congress had passed an act designed to protect negroes in the exercise of suffrage, to protect them against physical violence and intimidation. Certain white men had visited a negro on his premises and had prevailed upon him with great vigor to stay away from the polls. But the court very much limited the intended scope of the act by holding that the right to be secure in one's own house is not derived from the federal Constitution but

[1] *Anthony* v. *Halderman*, 7 Kan. 50.

[2] *United States* v. *Crosby*, Fed. Cases 14893.

from common law before the Constitution existed. Hence neither the Fourteenth Amendment nor the act of Congress passed under it could be invoked here to protect the individual from violence in his own home. Congress could not extend the federal action so far. Thereby the federal courts refused to punish white men for molesting negroes on their own premises and hence left open a door to much intimidation.

In 1874 another case was decided which limited even further the power of Congress to guarantee the negro his right of suffrage.[1] Congress had undertaken to pass an act to punish whoever hindered a citizen in any way, by bribery, intimidation, or other means, from voting at any election on account of race or color. Certain election officials in Kentucky had refused to receive ballots from negroes, and the case came up for decision. The court started out with the proposition already established that the Fifteenth Amendment did not confer the right of suffrage on anyone. This particular case concerned state elections, and the court stated that the Fifteenth Amendment was the only foundation Congress had for legislating concerning state elections. The amendment forbade discrimination only on account of certain facts—race and color. Therefore Congress could proceed to punish only the act which was forbidden—the discrimination on account of race or color. But the act of Congress undertook to do much more and sought to punish bribery and intimidation. The implication was that an election official could refuse a ballot offered by a citizen for any reason he chose except race or color, and no act of Congress could reach him. Of course it was

[1] *United States* v. *Reese*, 92 U.S. 214.

practically impossible to prove that the refusal was on account of race or color. The same point was further elucidated several years later (1881) in an Indiana case.[1] The court held that "it is not an offense against the laws of the United States to prevent a citizen, white or black, from voting at a state election, by violence or otherwise." To make it a matter for federal investigation the violence must have been done on account of race or color. Obviously the offending parties could allege any other motive for the attack and immediately be relieved of federal penalties.

The federal courts have been thoroughly consistent on this point even into the twentieth century. In 1901 they were again called upon to rule on this matter and again insisted that Congress could not protect the negro from actions aimed to keep him from the polls unless they could be shown deliberately to violate the terms of the Fifteenth Amendment. The court said, "Every wrongful obstruction of the suffrage of the black man at a state election is not on account of race or color."[2] The offensive act may have been based on some other reason, and if so Congress and federal authorities had no jurisdiction.

Indeed the scope of congressional power was very much limited even in respect to purely federal elections. In a Kentucky case the court pointed out that the Fifteenth Amendment simply forbade state or federal action intended to restrict the right of suffrage—and not the action of private individuals not representing the state.[3] The court held that it was the intent of the

[1] *United States* v. *Amsden*, 10 Biss. 283.

[2] *Lackey* v. *United States*, 107 Fed. 114.

[3] *James* v. *Bowman*, 190 U.S. 127; *Karem* v. *United States*, 121 Fed. 250.

amendment to prohibit legislation discriminating on account of race or color, and that the states themselves must be left to punish private individuals who obstructed the suffrage. Naturally the state authorities took no notice of these obstructionist activities. Congress tried to prevent them, but the federal courts stood in the way.

In a word, the courts asked the negro to prove what everybody knew to be a fact—that he was being kept from the polls on account of his race and color. And the unfortunate black found it quite impossible to prove that white ruffians waylaid and beat him because he was a negro and intended to vote. It is hard to get away from the fact that the court decisions violate the spirit of the war amendments. As one writer has put it, "Sophistry and fallacious pretense are invoked to overcome express constitutional mandates."[1]

Thus throughout the period from 1870 to 1890 the southerners contented themselves with excluding the negro by such means as have been discussed. During this period nine of the southern states drafted new constitutions, chiefly to get rid of the most offensive provisions contained in the reconstruction documents. Very little of interest was written into these constitutions concerning suffrage. Virginia and Tennessee made new constitutions in 1870. Virginia provided for the oath of allegiance and continued to exclude the long list of petty officers excluded by so many of the reconstruction constitutions.

In the Tennessee constitution at this date there appears a provision that voters must show evidence of having paid a poll tax. This provision had been carried

[1] *Yale Law Review*, XIII, 479.

in the convention fifty-six to eighteen,[1] but it was very hotly denounced for obvious reasons. The principle of any sort of tax requirement was condemned. In particular the vicious character of this measure was denounced because judges of election would easily be satisfied that white Democrats had paid their taxes but negroes would have to produce unimpeachable tax receipts. If the measure had been sincere it would have specifically required the presentation of a receipt. Negroes were notoriously careless about keeping their receipts, but a loophole was left for the careless white man.

It is interesting to note that the minority report on the suffrage measure was not in favor of abolishing the poll-tax requirement but favored total exclusion of the negro if possible. This report was full of bombast and religion and was characteristic of the irreconcilable attitude toward the negro voter. It exhorts the convention not "to deny the Truth, and blindly rush, in defiance of the natural law of God, to the confusion of our race and the destruction of the government our fathers left us."[2]

In 1874 and 1875 Arkansas and Alabama drew up new constitutions without special suffrage provisions. However, the Arkansas constitution was amended in 1893 to provide for showing poll-tax receipts as a prerequisite to voting. Of course this hit the negroes hardest. In 1875 a constitutional convention was held in North Carolina, and an attempt was made to get rid of the poll-tax requirement. But it was not successful. The new Texas constitution in 1876 contained nothing of special interest.

[1] Tenn. Conv., 1870, *Journal*, p. 177. [2] *Ibid.*, p. 179.

In the Georgia constitution of 1877 it was provided that all taxes must be paid as a prerequisite to voting. This measure had been vigorously opposed in convention, and the consideration was raised that vast numbers of negroes would fall into the hands of corrupt politicians who would pay their taxes for them. Another provision likely to hit the negroes hard was that men could be disfranchised for a crime involving moral turpitude. This was exceedingly vague but could easily be construed to fit the negroes' crimes.

The Louisiana constitution of 1879 contained nothing of particular significance. The same can be said of the Florida constitution of 1885. However, this constitution permitted the legislature to impose a capitation-tax requirement if it saw fit. This point was the subject of much debate in the convention. The committee on suffrage had before it a great number of petitions for and against the poll-tax requirement and wished to submit the matter to a referendum. But this the convention would not do, and the burden was thrown upon the legislature.

This review of the constitutions up to 1890 shows that no attempts were made legally to exclude the negro from the suffrage. However, many among the best element in the South had become tired of the force and fraud methods, although they believed them necessary until legal means could be found. They began now to turn their attention to the finding of legal means.

It should be remembered that the slavery issue and the negro-suffrage issue, in the minds of many people who feel most deeply, are above constitutional and legal

sanctions, like religion.[1] A very upright, law-abiding, honest, and highly moral person will ignore the law when it touches his religion. High-minded abolitionists would countenance no law that protected slavery regardless of its sanction. Just so with the Fifteenth Amendment. The slavery issue is projected into the negro-suffrage issue, and thoroughly righteous men in the South do not hesitate to evade the law despite its high sanction. Thus we see that the suffrage question to be treated in its most significant aspects must lead us far from constitutional law. Probably a majority of southerners sincerely believe that restriction of the colored vote is the very starting-point of all responsible statesmanship for them.

These twenty years of experience had also brought many people to a realization of the practical limitations of formal law. There were large areas in the South easily controlled by a very small minority of white men. The blacks, who greatly outnumbered them, submitted to political domination with very little protest. Of what use is law to support such indolent and careless citizens? If the negro lacks the ambition to take advantage of the law which is on his side and is vastly superior in numbers, it is a question whether he really desires the ballot. The small white minorities could not withstand for a single day the serious and determined efforts of the blacks to gain control. White men have controlled the situation repeatedly when odds were overwhelmingly against them. In the historic past men wrenched control from their masters and ruled themselves because they were convinced that it was their

[1] *Am. Pol. Sci. Rev.*, I, 20.

right, and they had the hardihood to fight and win. Until the negro develops a real honest, deep desire to vote and is willing to assert himself and take that power which the law holds out to him, his cause, as it were, is almost hopeless. Such a situation is beyond the pale of law. Defenders of the negro's cause invoke our sympathy for his plight when he is scared away from the polls by threats of violence, and solemn-visaged lawyers stand in court to defend a brawny negro who had his head broken when he wished to vote. But pity almost turns to derision when one thinks upon the noble sacrifices of those who in the past have won political power at the cost of life and limb and untold persecution. Shakespeare's supreme contempt for "thou action-taking knave" might well be directed upon a physically superior race, with all the law upon their side, who still lie meekly down and cry, "We are mistreated." Constitutional amendments and state laws cannot instil vigor, strength, determination, and conviction of right into the souls of men. Laws and constitutions are the outgrowths of such virtues. When the negro acquires them no doubt the problem of his suffrage will be settled. But in the meantime southern whites proceed to arrange suffrage laws according to their own desires.

It occurred to southern statesmen that there were about four perfectly legal and respectable ways to eliminate the negro from politics.[1] One was what may be called "centralization." A great number of elective offices could be abandoned and the governor allowed to appoint incumbents in their stead. Hence the negro vote would have no opportunity to assert itself, once the

[1] *Pol. Sci. Quar.*, IX, 692.

new system was established by the constitution. But such a political organization is all out of harmony with American tradition. Another way was to lay a more or less heavy tax requirement. A third was to make use of complex election laws which would befuddle the negro, and lastly the educational test was available.

But all of these methods caught a certain class of whites along with the negroes, and the process of disfranchising the blacks is complicated in the South by the presence and the need of illiterate foreign labor.[1] This element will not tolerate being excluded from the suffrage any more than will the poor and ignorant native whites. So here was a great problem. Twenty-five years after the war, during which time the negroes had the support of state and federal law, the South deliberately and with clearly expressed intention set about the business of constitutionally depriving the negro of his vote.

In 1890 a constitutional convention met in Mississippi and drew up a constitution which has served more or less as a model for other states seeking to circumvent the war amendments and legally disfranchise the negro. It provided that every citizen between the ages of twenty-one and sixty must have paid a two-dollar poll tax and be able to show his receipt before he could vote. After 1892 it was provided that everyone who wished to vote must be able to read the constitution, or understand it when read to him, or be able to give a reasonable interpretation of passages that might be read to him. A candidate for suffrage must also swear that he will answer truthfully all questions put to him concerning

[1] *Proc. Am. Pol. Sci. Assoc.*, II, 164.

his right to vote. Citizens may be disfranchised on account of conviction of theft, arson, and various other crimes.

On their face these provisions gave small hint of the obstacles that lurked for the negro voter. In the first place these provisions capitalized the careless propensities of the negro. The poll-tax requirement is in no sense a discrimination against him, but he might be called upon to show his receipt, and this document he was likely to have lost. It is impossible to tell the number of negroes who are unable to vote in spite of the fact that their tax has been paid, simply because they do not save the receipts. The white man is seldom asked to exhibit his receipt, although of course he could be. If only a permanent record of those who had paid their taxes would be available to the election officers the need of receipts could be obviated. But such a plan would protect the negro from his own carelessness.

The reading or interpretation test awaits the negro who has paid his tax and kept his receipt. If he can plainly read he goes past this stage; if not he finds it exceedingly difficult to convince the election officials that he understands the constitution when it is read to him, and his interpretation of excerpts seldom passes muster. The illiterate negro is ruled out by administrative discretion, while the equally ignorant white can easily satisfy the same officers of his ability to comprehend. As a last resort the oath remains to trip the negro up. He swears to answer truthfully all questions concerning his right to vote. Detailed, hair-splitting questions may be put to him, and a trifling deviation from the truth renders him guilty of perjury, for which

offense he may be disfranchised. Thus it will be seen that this constitution paved the way for wholesale exclusion of the negroes on perfectly legal grounds. The strongest point, of course, was the discretionary power vested in election officials to decide whether or not an illiterate person understood the constitution and could give a reasonable interpretation of it. Its weakness was that it did not fully protect the illiterate white from the same discrimination. For this reason the Mississippi constitution was not entirely satisfactory, and it took several years to develop more effective measures. The ultimate ideal, of course, was to exclude all negroes and no whites.

The records of the convention which drew this constitution clearly indicate that many men were quite dissatisfied with the discretionary power vested in officials. Many worthy men wanted a legitimate educational test, honestly administered, and proposed to organize some kind of tribunal for the distinct purpose of impartially deciding who could satisfy the test and who could not. Others preferred to have no educational test at all rather than to have it properly carried out, and they won the day. There was no intent to have it apply to whites, and, as said before, the weakness of this constitution was considered to lie in the fact that it did not fully protect the illiterate white man. Several times an attempt was made to put the whole burden on the legislature and leave that body to prescribe qualifications for suffrage.

Five years later (1895) a convention met in South Carolina which had before it the constitution of Mississippi and was able to improve upon it to a certain extent.

The voter could be required to show evidence of having paid all taxes assessed against him, including the poll tax. But as regards the educational test an interesting innovation was brought forth. It will be remembered that some means of protecting the illiterate white man was being sought. This convention proceeded to fix the requirement that every citizen in order to vote must be able to read the constitution or understand it when read, and if he could satisfy this condition he might be enrolled as a voter up to 1898. After that date he must be able both to read and to write or else own three hundred dollars' worth of property. However, previous to 1898 no man who could vote in 1867, or the descendants of such, nor any foreigner naturalized before the ratification of this constitution, should be required to pass any educational test. In effect this gave all the war veterans and their descendants, as well as foreigners, an opportunity to register before 1898 without passing an educational test. Proper discrimination in applying this test was supposed to keep out the negroes and admit the remaining ignorant whites to the roll of permanent voters. After 1898 a water-tight educational test was applied, with an alternative property qualification. This writing test could be made particularly severe for the negro, for he must make out without a mistake all his papers of application to be registered. This convention also included wife-beating and assault with intent to ravish in the list of crimes for which one could be disfranchised. These offenses seem to be more or less common among negroes.

Partly in extenuation of their severe treatment of the negroes the convention had spread upon its minutes a

detailed account of the graft, fraud, corruption, and swindling that had been practiced when the state was dominated by negro voters. This convention wanted the world to know just why it wanted to get the negro out of politics.[1]

The three-hundred-dollar property qualification as an alternative to passing the educational test is worth special mention. Property tests of any kind had not obtained in the country for many years, and certain delegates opposed it, even as an alternative, simply as a matter of principle. In reality it was of little significance, because very rarely would a man find himself held up on that test.

In 1898 Louisiana organized a convention fully conscious of its paramount duty of eliminating the negro voters and saving the illiterate whites. The committee on suffrage was so careful about the rights of illiterate white men that in its anxiety not to exclude any it proposed quite a list of alternative qualifications. Among them were the educational test with the alternative three-hundred-dollar property qualification. Those who had wives owning property should be allowed to vote; those registered as voters in 1868, or who *might have been* had they so desired; the descendants of those registered then, or who *might have been*. This simply shows the ridiculous extremes to which these men were willing to go in order to protect all classes of white men while at the same time excluding negroes.

As it finally turned out, the new constitution provided the poll-tax requirement and the necessity of showing receipts. Voters must be able to read and

[1] S.C. Conv., 1895, *Journal*, p. 443.

write in some language or satisfy a three-hundred-dollar property test as an alternative. Applications for registration had to be made out in one's own handwriting. However, a brief interval was given certain classes to gain exemption from the educational and property test. Those who could vote in 1867, or the descendants of such, and naturalized citizens were given an opportunity to register within a year as permanent voters. It is interesting to note that the United States senators from Louisiana at this date, Caffey and McEnery, both expressed the opinion that the Louisiana constitutional provisions concerning suffrage would be declared void under the war amendments.[1]

In 1901 Alabama, growing bold over the success of her sister-states during the past decade, drew up in convention and established in her constitution the most elaborate suffrage requirements that have ever been in force in the United States. They accomplished all that Mississippi, South Carolina, and Louisiana had accomplished, and even more. The poll-tax requirement was fixed. Up to 1903 three defined classes of persons were to be permitted to register as permanent voters. They were: (1) Those who had served in any of the wars of the United States from the Revolution to the Spanish War. Confederate soldiers were also included of course. (2) All legal descendants of men who had served in any of these wars. (3) All persons who were of good character and who understood the duties and obligations of citizenship under a republican form of government. While a considerable number of negroes might get in under these conditions, certainly no white man need be kept out.

[1] *Harvard Law Review*, XIII, 290.

After 1903 only those could vote who were able to read and write any article of the constitution in English and who had worked or been in some employment the greater part of the preceding year. The alternative was that any owner, or husband of an owner, of forty acres of land in Alabama, on which he resided; or any owner, or husband of owner, of property assessed at three hundred dollars' value, or owning personal property worth three hundred dollars, on which taxes had been paid, could vote. Then there was provided a long list of crimes and immoral practices designed to catch the negro. Assault on wife, adultery, "or crime involving moral turpitude," etc., or conviction as a tramp might disfranchise a citizen.

It must be constantly borne in mind that one must read between the lines of these constitutional provisions. The mere letter of the law may give no hint of the abuse that is possible under it. In Alabama the legislature later provided that on challenge a voter must take an oath declaring himself qualified to vote, in the minutest detail, and that he is not guilty of any of the long list of crimes mentioned.[1] This oath must be supported by someone *known to the election official.* Obviously the negro is at a very great disadvantage. There is not space to go into these various expedients, but there are many opportunities to construe and warp when there is the will to do it.

Thus it was right at the beginning of the twentieth century that the South came forth with the bold determination to disfranchise the negro. In the Alabama convention the president's opening address outlined the

[1] Ala. Code, 1907, Vol. I, sec. 408.

troubles that had come through negro suffrage. He justified illegal methods of excluding them only as one would justify a revolution. He discussed the various reputable means of reducing the negro vote and declared it the chief problem of the convention.[1]

The "grandfather" clause permitting descendants of certain persons to register previous to 1903 stirred up much disapproval. Although it was only a temporary provision men did not like the principle of it. In the words of the minority report, "It does not prescribe a qualification bearing any proper relation to the capacity of the voter to understand and discharge the responsibilities of the elective franchise, but fixes an arbitrary status depending solely upon his descent from an ancestry over which he had, and has, no control, and which is *impossible of attainment* by any exertion on his part." For this reason it was considered quite undemocratic.

In the following year North Carolina amended her constitution of 1876 by introducing an educational test together with a grandfather clause for temporary application. Voters must be able to read and write any section of the constitution in English. But prior to 1909 any person who could vote in 1867, or the lineal descendant of such person, need not satisfy the educational test and could register permanently.

The last and in many ways the most illuminating and significant step taken by one of the ex-Confederate states to disfranchise the negro came in Virginia in 1902. It is well worth while considering the work of the convention which drew this constitution, for

[1] Ala. Conv., 1901, *Journal*, p. 13.

it gives the best view of the situation as it exists in the South today. These delegates met as usual, with the avowed intention of excluding the negroes from the suffrage. As one writer has said, they intended to give permanent and legal form to existing conditions.[1] The negro did not vote in Virginia to any great extent, and they wished to make his exclusion legal. Where he did vote conditions seemed to be intolerable. A most impassioned plea was delivered in the convention begging the delegates to relieve Virginia of the blight of negro suffrage.[2] It was said that the real greatness of the state was being obliterated. The able statesmen were overwhelmed by the illiterate negroes. All ambition in the white men was smothered, for their efforts came to naught in a state where there were large numbers of negro voters. White men in the Black Belt were unable to contribute anything to the statesmanship of their time. The state could not take its proper place as a leader in the nation. Reference was made to the gallant struggle of the white men of this state during the past thirty years against negro misrule and corruption. Relief from this bitter struggle was sought in appropriate constitutional provisions. It was a terrible humiliation to proud Virginians, conscious of their glorious history, to realize that stupid, vicious negroes had such a large hand in the control of the state government. The attitude of this Virginia convention undoubtedly reflects the situation as it exists in the South today. Southern white men are positively determined to exclude the negro and only hope that they will be allowed to do it quietly and legally.

[1] *Pol. Sci. Quar.*, XVIII, 486.

[2] Virginia Conv., 1901–2, *Debates*, p. 2987.

The suffrage-committee report in this convention was debated before a conference of Democratic members from three to five times a week from October 12, 1901, to March 7, 1902, and was then considered in daily conferences of those members from March 8 to 28; and on March 31 it was taken up for consideration by the convention and the whole thing threshed over again. Many of the speeches were repeated.

The arguments of the committee chairman when presenting his report are simply startling.[1] His whole manner, his frank, unblushing, ingenuous treatment of the matter, gives striking evidence of the uncompromising, determined position that the southern whites now assume toward this problem. He declared that the literacy test would not be a sufficient safeguard, because illiteracy is fast disappearing among the negroes. He speaks of the state being "threatened" with the disappearance of illiteracy among the colored population. It was the intention of the convention to disfranchise the negro *whether he was literate or not.* Reference is made to the rapid advancement of negro education and hence the insufficiency of the educational test.

Again he says, "We listened to our friends across the mountains and we heard them tell us a grandfather clause would not save all their people." They meant that all the white illiterates could not trace their ancestry satisfactorily. The committee was determined that no white men should be sacrificed if it were possible to help them. The property qualification would rule out large numbers who could not get under a "descendants of veterans" clause. Also it would impede immigration. Hence the

[1] *Ibid.*, p. 2965.

committee, "anxious to do equal and exact justice to all the citizens of the state," had to look for other methods. A plan was suggested to let every man holding a license indicating that he was engaged in some profession or trade vote on the strength of such license, the intention being not to license laborers—"but the people told us the largest portion of their population, which is white men, are manual laborers." And so the patriotic committee, true to the principle of saving the white men's suffrage, had to abandon that scheme. Finally the committee took refuge in the "understanding" clause, that voters must be able to understand the constitution when read to them. The committee expressed regret that some negroes might get in under this clause, but it could not be helped. The chairman said, "I expect the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. *I do not expect an impartial administration of this clause.*"

The highly significant thing is that this man spoke for the majority—nearly unanimous—of the large committee. And his whole attitude indicated that he expected no opposition. He is not argumentative; he is merely explaining to the convention why this method has been adopted to achieve the ends which they desire. He is not trying to convince them of the justice and desirability of the end to be gained—that is unnecessary—he is simply explaining the means which the committee believes are best. That illustrates the striking feature of the present situation in the South. As to the end to be gained there is no question in the minds of

southern statesmen. The only debatable point is how to achieve the end.

The constitution finally adopted did not differ greatly from that of Alabama. A poll-tax provision was made with an alternative of war service or being the descendant of a war veteran. Previous to 1904 citizens could vote and register permanently if they could read the constitution or give a reasonable interpretation of it when read to them. Veterans and sons of veterans were relieved of this just as they were of the poll tax.

After 1904 it became necessary to be able to read and write, making out papers unassisted. An alternative was the property test, not to exceed two hundred and fifty dollars. There was also the dangerous provision concerning the oath.

It is not difficult to appreciate the effect of these new constitutions in the South. Even those few negroes who in the past had braved threats and various sorts of intimidation were now disfranchised by the law. Great masses of them, utterly uneducated, found no relief in the property-holding alternatives. Disfranchisement for crime seems to be a perfectly legitimate rule to apply and has been used throughout our history. But when a negro could be disfranchised because of a trifling physical conflict with his wife—interpreted as wife-beating—the principle involved is utterly subverted. But the provisions leaving a large measure of discretion in the hands of election officials played most havoc with the negroes. It is absurdly easy to balk any man when he is required to explain the meaning of a phrase to the satisfaction of a prejudiced judge. A negro seeking to be enfranchised under that clause might be asked to explain the theory of

sovereignty involved in some abstract expression in the bill of rights, or to tell what part of the constitution was derived from the Magna Charta. The significant thing is that many states of the South are now potentially fitted to exclude practically all the negroes from the polls.

The grandfather clause has excited too much interest in proportion to its importance. Perhaps this has been because of the suggestive title. However, in order to acquire suffrage under its terms the white man usually must confess both penury and illiteracy, and not many choose to do that. The grandfather clause also is only intended to operate for a short time in any case. It was merely an expedient to save white men from the severe requirements designed to catch all the negroes. How effective these laws were in keeping the negro from the polls it is not the purpose of this work to show.[1] The important thing is that the South is preparing itself to exclude the negro wholesale if it chooses so to do. It is significant that public opinion in the South has crystallized, through a generation of protests, into a calm, deliberate, sincere determination to do thoroughly what is honestly believed to be just and necessary. And it is equally significant that the negro, who has passed through more than a generation of freedom, is a passive, careless witness of his own political funeral. The

[1] Statistics concerning the proportions of whites and negroes of voting age in the South, of the percentage of illiteracy, and of the number registered as voters may be found in numerous places. The most reliable sources probably are *Bulletin 8*, 1900 Census, p. 102; *International Yearbook* (1902), p. 19. Less trustworthy sources are current magazine statements, e.g., *American Negro Academy*, No. 11; "Penning of the Negro," *Outlook*, LXXI, 163.

situation speaks volumes. The federal lawmaker stands helpless. The negro must have failed to make himself an intelligently dominant political factor in the South, or such constitutions as have been reviewed here would be utterly impossible. There is no intent here to justify these constitutions or to argue in favor of excluding negroes from the polls, but it is fair enough to present the palpable futility of trying to stimulate social consciousness and create capacity through mere alterations in political machinery. The passive attitude of the negro himself and the helpless indignation of his white champions are evidence of the fact. The thought suggests itself that federal legislation or federal action in the interests of the negro is almost hopeless, and when he develops such capacity federal action will be quite *unnecessary*.

That the North has consciously or unconsciously acquiesced in this view of the situation will hardly be denied. A great many articles appeared condemning the action in the South, but the indignation expressed seems almost forced. The writers invoke ancient theories of right and principles of democracy that no one can deny in the abstract. But the public seems hardly to be interested, certainly not in the least aroused. It has been in good taste for speakers and lecturers on political matters to heave an academic sigh when speaking of the negro in the South and immediately to pass on to more interesting matters. The successive platforms of the political party dominated by the North serve as an excellent barometer.[1] In 1864 slavery was denounced in uncompromising terms. In 1868 "the

[1] T. H. McKee, *Party Conventions*.

guaranty by Congress of equal suffrage to all loyal men of the South was demanded by every consideration of public safety, of gratitude, and of justice, and must be maintained." In 1872 impartial suffrage was demanded. In 1880 the Greenback party denounced efforts to restrict the suffrage. In 1888 the Republicans pompously demanded purity in elections. In the same year the Prohibitionists gave vent to pious wishes and archaic theories about suffrage. In such harmless terms the parties expressed themselves until 1904, when suddenly the Republicans deserted the negro, his abstract rights, fundamental principles of democracy, etc., and simply demanded the *reduction of southern representation* as mentioned in the Fourteenth Amendment. Complete silence on the subject would have been a less ridiculous dénouement.

But the statement in the Republican platform may be taken as a fair indication of popular sentiment. Public attention has ceased to focus upon the negro cause; it is looked upon as lost, or not worth saving, and attention now is devoted to the possibility of reducing the representation of southern states. It is most discouraging for the advocates of negro suffrage to contemplate this tendency utterly to disregard the negro's rights and to show real eagerness to make political capital out of his downfall. But the attitude of the Supreme Court on these recent constitutions ought to be considered.

Just a few significant cases will be presented. In 1892 a case arose concerning the validity of the Mississippi constitution of 1890.[1] It was maintained that the new constitution violated the enabling act which per-

[1] *Sproule* v. *Fredericks*, 11 South. 472.

mitted Mississippi to rejoin the Union. That act, it will be remembered, forbade the state to exclude negroes from the franchise; but, as might have been expected, the court held that such a law of Congress was of no effect after the state had assumed full status. Further, the court declared that the Mississippi constitution did not discriminate on account of race or color and hence did not violate the war amendments. Thus the first of the modern reactionary constitutions passed the acid test with flying colors.

In 1898 the literacy test in this same constitution came up for review, and the court was obliged to reiterate its former position.[1] The court held that this clause did not on its face discriminate against the negro and did not violate the Fourteenth Amendment. The court recognized the possibility of gross discrimination and injustice on the part of registrars, but the terms of the law reached all men, and the court could not condemn it simply because abuse was possible. Hence the literacy test and the clause permitting discrimination have been firmly established and are backed up by the Supreme Court.

That clause in the Alabama constitution providing even a broader scope for discrimination came up for review in 1903.[2] It will be recalled that this constitution permits the registrar to decide whether a citizen understands the duties and obligations of citizenship. A negro sought to force the registrars to enrol him, alleging that the clause in question was unconstitutional, that the state had violated the war amendment by making such

[1] *Williams* v. *Mississippi*, 170 U.S. 213.

[2] *Giles* v. *Harris*, 189 U.S. 474.

a constitutional provision. The court pointed out the inconsistency of his asking to be registered under the terms of a void act, and went no farther.

But a startling thing occurred in 1914 when the court overturned a grandfather clause in the constitution of Oklahoma.[1] It does not have very great practical interest, for in most states where the grandfather clause had been used it was merely temporary and had run its course, and with the rapid disappearance of illiteracy it will hardly be resorted to again. But the sudden change in attitude on the part of the court is interesting. On August 2, 1910, Oklahoma passed by forty thousand majority an amendment to the constitution containing a grandfather clause. However, there was some trickery in the case.[2] The words "For the Amendment" were printed at the bottom of the ticket, and unless they were marked out the ballot was counted affirmatively. The court said that the clause, in effect, revived a standard of suffrage existing before 1866, which the Fifteenth Amendment was designed to abolish. It creates "a standard of voting which on its face is in substance but a revitalization of conditions which when they prevailed in the past had been destroyed by the self-operative force of the amendment." It makes the condition of that earlier period the controlling and dominant test of suffrage—it could have no other purpose. Hence it is invalid. On the other hand a literacy test was upheld. But of course this was not a very serious blow to the South.

But to return to the new phase of the negro suffrage issue—the demand for reduction of representation in

[1] *Guinn* v. *United States*, 238 U.S. 347. [2] *Outlook*, XCV, 853.

proportion to the number of negroes disfranchised. Since the movement for negro suffrage has been diverted into this channel and lost, as it were, it is appropriate to consider the merits of the problem.

In the first place the question is whether the Fourteenth Amendment is intended to operate literally whenever suffrage is reduced. It has been argued very ably that such is not the case, that it cannot be that anyone intended to reduce representation when suffrage was denied on account of crime, illiteracy, etc.[1] Other writers have developed the proposition that it makes no difference what was meant, for the Fifteenth Amendment has superseded and made imperative that clause of the Fourteenth.[2] However, if the Fourteenth Amendment intended only to reduce representation when suffrage was denied on account of race, color, etc., the Fifteenth Amendment, if not abrogating it, at least paralyzed it, and the Fourteenth could not operate, for its operation would imply the existence of an unconstitutional state of affairs. But if one looks at the Fourteenth Amendment and merely considers exactly what it *says*, not what it may mean, but what it says in plain, blunt English, there is no argument left. It then looms as a very unwise measure, practically impossible of being put into effect—but there nevertheless.

The situation has aroused violent protest in the North. Magazine writers have written about it, speakers have discussed it in public, and civic clubs have passed resolutions about it. In fact, the cause of negro suffrage has been swallowed up in the argument over the practical political effect of his disfranchisement.

[1] *North Am. Rev.*, CLXXX, 115. [2] *South Atlantic Quar.*, Vol. V.

The South is grossly overrepresented. The number of voters in the South electing representatives to Congress is very much smaller than the number of voters in the North electing an equal number of representatives. The southerner, however, says that congressmen do not represent *voters* alone, as the northerner's argument implies, but all the people—and hence all should be counted whether they vote or not. It is none of the northerner's business how the southern districts select their representatives.

The framers of the Fourteenth Amendment probably never foresaw the overwhelming difficulties in the way of enforcing it. These problems can only be hinted at and references made to fuller treatments of the case.[1] It is almost impossible to discover how many men are really disfranchised. Many do not vote because of choice. And when it is attempted to enumerate those disfranchised for some specific cause the problem is intensified. A literal application of the amendment would radically alter our political concept of representation, involving representation based on voting population and not on the actual population.

[1] Professor A. B. Hart, in *Pol. Sci. Quar.*, VII, 313, has an article made up of free-and-easy statistics showing in round numbers the probable number of men disfranchised for one cause or another. A very thorough discussion is found in the *South Atlantic Quar.*, Vol. V, in which Professor Frailie calls attention to such interesting considerations as these: Where a tax requirement is laid only those literally *unable* to pay are really disfranchised—not all those who simply do not. When a literacy test obtains it is impossible to discover who are illiterate, and thereby disfranchised, for an alternative may exist of passing an "understanding" clause, and how can one find out who are unable to understand the constitution? Also many illiterates fail to attempt the understanding clause, who might pass if they tried. Merriam in *Forum*, XXXII, 460, brings up the question of Chinese being excluded.

The bills introduced in Congress demanding the application of the Fourteenth Amendment exhibit an utter lack of appreciation of the difficulties involved, and no solution has yet been offered. It is one of the most serious problems of the day and threatens much trouble, especially if the Democratic party remains in power. The Republicans would be likely to become more and more restive under the conviction that Democratic power is being supported by unfair methods. In the meantime the cause of negro suffrage is well-nigh lost and bids fair not to be revived again. The attitude toward negro suffrage is excellently summed up in the introduction to Professor Dunning's articles on the "Undoing of Reconstruction" in the *Atlantic Monthly:*

> Our temporary coldness with regard to the moral issues involved in politics, combined with that world-wide reaction against democracy which has been noted by many recent *Atlantic* writers, makes it unlikely that any considerable portion of the northern public will at present seriously bestir themselves in the negro's behalf.[1]

[1] *Atlantic Monthly*, LXXXVIII, 435.

CHAPTER IX

WOMAN SUFFRAGE SINCE THE CIVIL WAR

There is still half a century to deal with, half a century of fumbling with suffrage limitations in the North. Chapter viii carried the suffrage problems of the South down into the twentieth century, but it yet remains to trace the controversies in the North down to that same point.

Obviously negro suffrage has not been a serious problem far outside the solid South. After the war amendments were in force and had been interpreted by the courts, negro suffrage was seldom even discussed in the northern states. Property and taxpaying tests were gone, and as far as manhood suffrage was concerned there remained nothing more to discuss but the status of the alien and the advisability of literacy tests. Those matters were of comparatively small importance, and hence it was that the woman-suffrage movement rapidly came to the fore and soon overshadowed every other suffrage problem. A history of suffrage in the North since the Civil War then is chiefly a history of the development of woman suffrage. A voluminous and thorough history of this development has already been written,[1] and there is no intention now to go through it with paste pot and scissors in order to write this chapter.

[1] Stanton, Anthony, and Gage, *History of Woman Suffrage*. Four volumes. This monumental work deals with woman suffrage in the United States since 1854.

After disposing of some of the minor issues it will therefore only be necessary to outline the arguments for and against woman suffrage as they have been developed and enlarged upon, and finally to discuss the status of the movement in the second decade of the twentieth century.

It was pointed out how most of the southern states penalized Confederate sympathizers in their suffrage laws immediately after the war. Naturally there were some war-inspired tests to be found in the North as well. Between 1865 and 1870 new constitutions were drawn up in West Virginia, Maryland, Missouri, Nebraska, and Nevada, the last two being new states. They all sought to penalize southern sympathizers. While it was not thought necessary in other states to alter suffrage laws to exclude such persons, the occasion of writing a new constitution offered an opportunity to disqualify them too easy to be overlooked. So it happened that in all these states men who had been identified with the Confederacy were excluded from the franchise. But the prejudice soon died out, and after 1870 such measures were no longer to be found.

A more significant thing is that in Missouri and in the new state of Nebraska aliens were permitted to vote after simply declaring their intention, in Missouri one year after, and in Nebraska only thirty days. It is also significant that in all these states the negro was positively excluded until the operation of the Fifteenth Amendment made this no longer possible.

It will be remembered that when the ignorant foreigner became a problem in the eastern seaboard states the lawmakers sought refuge in literacy tests.

Now when an influx of free negroes was anticipated in the North men took a new interest in proposed literacy tests and hoped to use them to exclude the benighted Africans. As was pointed out before, literacy or educational qualifications seldom were stigmatized in the popular mind to the same extent as property or tax-paying qualifications. In this country there was no very good reason why every man could not learn to read and write. Objections to educational tests were more or less theoretical. The question came up in the New York convention of 1867[1] and was very thoroughly discussed.

The arguments in favor of a literacy test were obvious enough, but there seemed to be weighty objections to them. Of course it was said that any such qualification was quite out of harmony with our democratic institutions. Literacy is no indication whatever of character and real worth. No one ever maintained that it was. Was it desirable then to exclude from the suffrage a great many worthy, honest, thrifty, hard-working, able men, who may indeed have fought in the war, simply because they could not read and write?

Some who paid taxes even might be excluded. Such questions were painfully difficult of solution. Delegates tried to evade by saying that there were not many such. That may have been so, and yet thoroughly sound political institutions ought to comprehend even theoretical possibilities, and such a measure as this, it was said, violated in spirit a fundamental principle of our democratic philosophy. That only a few might be injured did not affect the principle. And, after all, men seemed

[1] N.Y. Conv., 1867, *Proceedings*, p. 491.

to believe, though they did not express it clearly, that the wishes of an illiterate man ought to find just as full expression through democratic political machinery as the wishes of an educated man. The ignorant man may not have known what was good for him, but he did know what he wanted. A benevolent autocrat might give a man what was good for him, but only the man himself could ask for and secure through the suffrage just what he might want, be it good or bad. Should the uneducated man not have a right to satisfy his honest, legitimate wants? Viewed in the abstract, this problem lies at the very root of our democratic philosophy.

The doctrine of expediency again was stalking in under cover of its usual disguise. No one had the courage to look it in the face, it was so blunt, so materialistic, so regardless of the sacred "rights" of the individual. And yet the advocate of literacy tests was really saying, "It is expedient that we should ignore the desire of the illiterate man," and the conclusion was: He has no rights. How harsh it sounds, and yet in learned phrases that is what the conservatives have always said. And on the other hand the radicals themselves took refuge in the specter of expediency. If their arguments were any good at all they proved too much. Natural, inherent, inalienable rights were talked of, government by consent of the governed, direct popular control, real democracy, etc. These always were the weapons of the radicals. But the logician could turn their own arguments against them. To the champions of the illiterate man who protested in these terms against exclusion could be pointed out, the paupers, the aliens, the soldier boys of eighteen and twenty, and, last

of all, the women. And the only retort could be: "Oh, yes, it is expedient to exclude *them*, but *we* should vote."

Observe that in the last analysis they all were merely giving their various interpretations of expediency utterly regardless of the rights of individuals as such. And in the year of our Lord 1918, in the United States Senate, where discussion waxes hot on the Anthony Amendment, the same century-old self-deception and timidity are exhibited. The conservatives lack courage to say boldly: "You have no rights." The radicals are afraid to retort, "Nor have you." And yet both sides are in reality exploiting their interpretations of expediency. The one puts his interpretation in a sugar coat and talks sentimentally about woman's place being in the home. The other disguises his in declamation about fundamental rights and democracy.

But to get back to the New York convention of 1867, the literacy test was defeated thirty-eight to sixty-three.[1] In connection with the discussion there was much talk about the right of paupers and even criminals to vote. Inmates of institutions, it seems, voted generally and lent themselves readily to corruption, but nothing new was done about it.[2] The question has, moreover, very little interest and really does not have to be solved in a constitution.

[1] N.Y. Conv., 1867, *Proceedings*, p. 491.

[2] *Ibid.*, p. 559. Mr. Macdonald hoped that something would be done about lunatics: "In my own town they have a lunatic there whom one party makes vote one year, and the other party the next year, for there is no possibility of ruling him out . . . . and I live in a town where the election is pretty close. If it should be turned by one vote then the lunatic would elect the whole ticket. I do not believe in that."

The New York convention of 1867 is particularly noteworthy because it was the scene of the first serious effort to secure woman suffrage—serious because it was the first occasion on which the proposition had occupied the attention of a constituent assembly for any considerable length of time and had required the deliberative thought of able statesmen on both sides. The woman's move, it will be remembered, had scarcely been thought of until 1854. Then the Civil War diverted attention from it before it was much more than well organized. But now the war was scarcely over when the woman-suffrage advocates centered all their forces upon New York. A state constitutional convention was of course the most appropriate place to strike. Suffrage is a matter left entirely to state control. Suffrage qualifications are always fixed in a constitution; hence efforts expended upon Congress, state legislatures, and other assemblies could scarcely be looked upon as more than propaganda. The one place to look for practical results and effective gain for the cause was in the state conventions. They struck with telling force, and since that year politicians have not been able to treat the cause in a jesting manner.

Although the controversy over suffrage was now on a new level and the barrier to be overcome was sex rather than wealth, race, or literacy, the same familiar arguments were easily adjusted to the new situation. With clever innuendoes the women protested against being classed with idiots, children, criminals, and paupers. This appeal had not been used to any extent by men who sought the franchise in earlier years, but the women used it constantly along with many theatrical

trappings and sentimental pleadings. There was here an opportunity to appeal to the emotions that had never existed before, and the women were not averse to exploiting it. And it must be said that they were met with similar empty emotional appeals from their opponents.

Those who tried to remain on a rational plane threshed over the threadbare philosophy of Revolutionary days. The Declaration of Independence was called naught but mocking irony unless women had the ballot. The government was not deriving its powers from the consent of the governed. There was taxation without representation. Civil rights were an empty dream when there was no political power to give them substance. And finally women, so they said, had a natural, inherent, inalienable right to share in self-government.

Once more it is to be observed that as usual the reformers were interpreting democracy as being summed up in the satisfaction of their own peculiar desires. If these arguments were taken seriously they would lead to a startling conclusion when traced back through the pages of this book. The women said that there was no democracy if they did not have the ballot. Ten years before the free negroes said the same about themselves, but the women were scarcely thought of then. About that time the same thing was said in order to aid the cause of the thrifty aliens who were taxed and governed without their consent, but the women and negroes were not considered. A few years earlier the non-taxpaying proletariat said the same thing about themselves, but had no thought of the women, the aliens, and the negroes. Farther back still, when even the small taxpayer was

excluded, he shouted the same thing to the property owners, who alone enjoyed the suffrage. What an unspeakable despotism must have existed in the days of Washington and Jefferson!

This history, if it does nothing else, ought to show that democracy is not to be measured by so narrow a gauge as the suffrage franchise. The United States was a democratic nation in 1789 just as it is in 1918. Whether only property owners should vote, or whether women should vote, is a mere question of expediency. What suffrage, under the circumstances, will make for the greatest social good?

Of course there were some in this convention who rested their demands upon the argument that woman suffrage would make for social betterment and left aside the arguments concerning rights, taxation, and representation. But these people made boasts by which they would not have cared to stand later. Woman suffrage, it was said, would rid the cities of vice and prostitution, prohibition soon would follow, crime would be reduced to a minimum, and all manner of reform would come. They would transform their pious wishes into law. Reformers of this type have usually been badly disappointed. In the first place, the legislation hoped for is very slow in coming if it comes at all, and, in the second place, if it does come it is found that the end in view cannot be attained by means of legislation.

The theory of representation has always been troublesome and was easily brought into the controversy. Women, it was said, were a distinct group in society and as such deserved representation. Such an argument as that of course threatened to put a new

interpretation upon the theory of representation obtaining in the United States. The people of the United States have always considered themselves as one homogeneous mass. Thus there is no capitalist group, no proletarian group, no business men's group, no clerical group, no bourgeoisie—seeking recognition as a distinct group. The political parties in this country have always appealed to all people, of whatever social status, proclaiming their policy as suited to promote the best interests of all people—not the well-being of a particular group, such as a labor group. One of the admirable and unique things about the party system in the United States has been that the leading parties do not pretend to be so identified with any particular social group but have always offered their policies as being best for all. Thus there have been no well-defined groups demanding recognition as such.

The women threatened to do this thing, and many of their speakers declared that they needed representation as women. Leaders in later years recognized the unwisdom of such an attitude and did not differentiate between the interests of women and of other citizens of the country. The real problem of suffrage merely was: Who should choose those who are to represent *all* the people? Woman suffragists all believe that women should share in this choice, but only the later leaders have avoided the unfortunate attitude that women should share because women, as women, deserve representation.

There has been more irrelevant bombast in the woman-suffrage debate than in any other previous debates on suffrage questions. The opponents in the

past were for the most part not well prepared, and for that matter seldom have been well organized or prepared since. Indeed there was surprisingly little intelligent opposition. Men continued to say vaguely that woman's place was in the home, and there was no end of sentimental, almost maudlin, rambling about the virtues of women, which were all to be destroyed presumably if once they had the suffrage.[1] There were plenty of sensible arguments to bring forth, but men preferred to be sentimental.

Reverend gentlemen proclaimed the teaching of the Scriptures on the subject. St. Paul and the biblical rib were much in evidence. These men were very dogmatic, as they had been at the women's conventions before the war. There was no compromising with this element,[2] and they lent respectability to the opposition.

There is no doubt that many were opposed to woman suffrage for reasons which they could hardly explain. The scriptural passages so freely quoted without a doubt had much influence, particularly upon men who seldom reasoned things out, and upon others who were blindly religious. But the religious opposition was not a lasting

[1] N.Y. Conv., 1867, *Proceedings*, p. 433. A typical opponent of woman suffrage speaks: "I love to look upon the sweet face of a virtuous woman. I love to see her standing at her place in the family circle, with a new, clean, gingham dress on, baking warm biscuits for tea. I love . . . . " *ad nauseam* about gentle, tender, loving woman; sweet, charming influence; bright star in the sanctuary of the home, angel voices, etc.

[2] *Ibid.*, p. 424: "The right of self-government upon which our whole superstructure is based is in the man. It has been written by the finger of God himself upon the mental constitution of every human being and in such unmistakable characters that it is impossible for us to misunderstand, misinterpret, or mistranslate them."

opposition. Be it prejudice, ignorance, stupidity, or what you will, a great many men at this time, and ever since, were offended at the thought of woman "leaving her proper sphere." It was a perfectly honest, manly, guileless sentiment. This feeling did not permit of logical exposition. It could hardly be defended, or even described in words. If a man did not experience that feeling, springing up spontaneously within him, no amount of talk could stimulate it. Thus it was that mental pictures of women in their domestic occupations, glorification of womanly virtues and distinctly womanly functions, and dire threats of what might happen if she took part in politics stirred an unreasoning sentimentalism that could withstand much harder blows than rational arguments ever could. It is this sentiment, prejudice if you wish to call it so, that has been the most effectual block to woman suffrage. It has not been crooked politics, the liquor interests, the corrupt element, nor yet ignorance and undemocratic selfishness that has kept women from the ballot. Logical argument has had surprisingly little to do with it on either side. It has been this unreasoning, deep-seated feeling, a sense of revulsion at the thought of woman in politics, out of her "natural sphere," that has held the women back. And until this perfectly honest sentiment is broken down there can be no hope for woman's enfranchisement. The women do not have to fight the corrupt politician; they do not have to fight the vicious interests and never did. It has always been the honest, wholesome, straightforward, upright high-mindedness of good men that they have had to fight. As said before, this opposition has seldom been clearly

expressed, and because of its very nature hardly can be; yet in its very honesty of motive lies its strength.

There is one argument, however, that has slowly broken through this opposition. It was eloquently presented in this convention,[1] and in the twentieth century it is the keynote of the woman's claim. It is that no one can possibly say what is woman's natural sphere until she has the same liberty as man has to develop and seek her sphere by natural processes. Restrictive legislation intrudes as an artificial force, and woman never can attain her natural sphere until such artificialities are removed.

The woman-suffrage program was defeated, of course, but could boast of a respectable minority. The vote was twenty-four to sixty-three.[2] The compromisers were present as usual and wanted a popular referendum. Others wanted to permit woman taxpayers to vote, and some thought that women could safely vote on school matters. Compromises always attract a goodly following, and these plans were utilized in later years. However, as one man said, his only objection to women voting was that they were women; no compromises could tempt such men as he.

In the same year, 1867, a constitutional convention was held in the state of Michigan, and here too the suffrage issue arose. It was obvious early in the convention that the women had no chance to secure a favorable vote, and instead of debating the issue to any great extent the advocates directed all their energies toward securing a referendum on the question. It is

[1] N.Y. Conv., 1867, *Proceedings*, p. 469. Presented by Mr. Curtis.

[2] *Ibid.*, p. 470.

surprising how close they came to winning this. A proposal was made that a constitution permitting women to vote should be submitted to the electorate, and the voters were to have an opportunity to vote separately on the suffrage article. If a majority of those voting on the question favored it, it was to remain a part of the constitution. Such a method of presentation would have given the suffragists a tremendous lever. The proposition was defeated in convention by an exceedingly small margin, the vote being thirty-one to thirty-four.[1]

The incident is peculiarly significant in that it indicates a tendency to side-step. Politicians were already afraid of woman suffrage and felt safer if they could pass the issue along to the electorate without committing themselves. It is a striking thing too that suffrage has never been a party issue. The leading political parties at no time ever definitely committed themselves, merely trying to say nice things to the ladies without promising anything. Men have paid no attention to party lines when the suffrage question has come up, and since the Civil War Democrats and Republicans have joined hands on either side of the fence.

It may be said in passing that a very mild and indefinite literacy test failed in this convention.[2] It had been proposed that voters "shall possess sufficient knowledge of the English language to converse therein," but the proposal was quickly disposed of. The states in the Great Lakes region were not ready to antagonize their foreign-born population, and, although alien suffrage

[1] Mich. Conv., 1867, *Journal*, p. 704.

[2] *Ibid.*, p. 699.

was not tolerated everywhere in this section, nothing was done that might drive immigrants away.

Two years later, 1869, the suffrage problems were vexing a convention in the state of Illinois. The full significance of the Fourteenth Amendment had not yet dawned upon this convention, and the delegates were inclined to argue long and bitterly on the merits of negro suffrage. It was decided to admit the negroes to the ballot,[1] and this step aroused the advocates of woman suffrage to furious indignation. With biting sarcasm and bitter contempt they upbraided the convention for taking in the debased, vicious, black man and repudiating their own women. A large number of delegates were vigorously working for alien suffrage, and toward them was directed a double charge of obloquy. Here were men throwing open public offices and franchise privileges to half-civilized Africans and ignorant, stupid foreigners and yet closing the door upon their own wives and daughters. However trifling and superficial such a line of argument may be considered, it has always succeeded in making honest, fair-minded men feel decidedly uncomfortable. They do not think that the argument is sound and yet they are not ready to meet it in debate. Their attitude is a result of that feeling, that sentiment of revulsion, which comes spontaneously and absolutely inhibits any rational discussion with the man who does not share it. If a man did not experience a feeling of revulsion at the thought of his wife getting into politics just as he would at seeing her smoke a cigar and drink beer in a saloon, it was utterly impossible to argue with that man on common ground. This emotion, which

[1] Ill. Conv., 1869, *Debates*, p. 603.

could neither be defended in words nor overcome by argument, is the one great barrier woman suffragists have had to assail. In many ways it was somewhat akin to the emotional antipathy to slavery, though of course not so strong. Rational arguments fell off the abolitionist like water off a duck's back, and he made no attempt to defend his own position in rational argument; but he was ready to die for it, and that was the significant thing. He simply hated slavery with all his heart and soul and with an honest conviction that approached fanaticism. If the other fellow did not share it, talk was useless—go get a gun!

It is something of this spirit that women have been facing during the last half-century. Opponents were exhibiting their honest interpretation of American chivalry, which involved a strange complex of emotions. A peculiar generosity was there, a jealous desire to do things *for* their women, a wish to protect them from debasing influences; and mixed in too, of course, was a bit of prejudice and selfishness. But withal, the opposition was essentially honest and well meant; if it had not been it would have crumpled to the ground years ago.

The attempt has been made here to give an idea of the atmosphere that was created whenever the woman-suffrage issue came up for debate. It is unnecessary to go through many more conventions, for the story was always the same, and the same atmosphere has always been created, even into the present century. There has always been in the foreground the shouting radical, unschooled and unwilling to learn, more eager to talk than to study, saying ridiculous things about natural

rights and democracy, and he has been well backed by a peaceful, benevolent element. There has been the high-minded philosopher actuated by a noble desire to broaden the sphere of woman's activity in order that all mankind may benefit. There have been at least two sections of the opposition, one mute, the other maudlin; and there sometimes could be found a few, a very, very few, who claimed some knowledge of political science and history and sincerely believed that granting woman suffrage would be an unwise step. And pervading the whole there has been the spirit of compromise, finding expression in proposals for referendum, proposals to let women taxpayers vote on certain issues and to let the women vote on school matters.

These compromises, particularly the latter, made considerable headway, especially in the West, while the East was very conservative.[1] Colorado came into the Union in 1876 with a constitution permitting women to vote in school elections and containing a clause permitting the legislature to submit the question of full woman suffrage to a referendum.[2] This convention wanted to pass the burden to the legislature. Colorado also permitted aliens to vote and authorized the assembly to apply a literacy test after 1890. No more states came in until 1889, and in that year there were four, two others following in 1890 and a seventh in 1896.[3] It will be

[1] A Vermont convention in 1870 (*Journal*, p. 57) turned down woman suffrage by a vote of two hundred and thirty-three to one.

[2] Referendum had been tried in Michigan two years previously, and woman suffrage was defeated 135,000 to 40,000. Thorpe, *Constitutions*, p. 1976.

[3] Montana, North Dakota, South Dakota, Washington, Idaho, Wyoming, and Utah.

well to examine this group of new constitutions for new suffrage provisions.

Montana permitted women to vote in school elections and women taxpayers to vote on all matters referred to a vote of taxpayers. These compromises are hardly worth discussion; they merely exhibit a tendency to trifle with the real issue. Of course there is no reason why women should vote on school matters any more than on other matters. But strangely enough school affairs have been considered part of "woman's sphere." Education has always been considered an effeminate piece of business in this country, and the entire school system has been dominated by feminine influence outside and in. Now the newer states saw fit to turn school problems over to woman suffrage as being appropriate questions for women to handle. As to the special grant of suffrage to woman taxpayers, that grew out of the false economy discussed earlier in this work.

North Dakota permitted women to vote on school matters, and the legislature was authorized to provide a literacy test. South Dakota also granted woman suffrage in school elections and furthermore admitted aliens to the ballot. Washington followed suit as far as schools were concerned and required that after 1896 all voters should be able to read and speak English. Idaho granted school suffrage to women and in 1896 full suffrage. Wyoming came in with a constitution granting full, unqualified suffrage to women, and voters were required to be able to read the constitution. Utah in 1895 provided full woman suffrage in very explicit terms and excluded aliens in equally explicit terms.[1]

[1] Thorpe, *op. cit.*

It might be interesting to some persons to trace the process by which the opposition to woman suffrage was overcome in order to make these new constitutions possible, but few new arguments would be found. It simply happened that the indescribable, inbred aversion slowly dissolved. Why it disappeared is just as hard to explain as how it originated. Men simply ceased to feel that aversion any longer.

During the immediate period under discussion certain states amended their old constitutions with new suffrage provisions. Maine in 1893 provided that voters must be able to read and write in English. Colorado extended full suffrage to women in 1893, and Minnesota granted school suffrage in 1898. California in 1894 provided that voters must be able to read any article of the constitution and write their own names. On the Atlantic coast in 1897 Connecticut and Delaware are found passing similar acts. Thus in every section of the country there was manifest a tendency to protect the ballot from illiterates; but sometimes it was the ignorant, foreign-born population that was aimed at and at other times it was the negro. Curiously enough as late as 1905 the people of Maryland were casting about for a satisfactory literacy test that would exclude negroes, and there seems to have been no particular desire so to frame such an act that it would not exclude illiterate whites as well. Nevertheless the proposed measure was severely denounced in many quarters.[1]

The Federal Naturalization Act of 1906 has really done away with any further need for literacy tests, and they probably will not be introduced in any more states.

[1] *Nation*, LXXXI, 4.

An alien seeking naturalization must now be able to pass literacy tests severe enough to satisfy most states before he can get his naturalization papers. This, however, does not do away with the menace of illiterate negro suffrage, and the incident in Maryland indicates that trouble may be encountered even farther north. It is to be wondered whether some northern states will feel obliged to resort to the same tactics as the South in order to eliminate the negro. In southern Illinois and other places outside the solid South the black man has proved to be a rather difficult problem.

The latest step in suffrage history has been the vigorous campaign carried on in Congress looking toward the passage of the proposed Anthony Amendment. This amendment aims to secure full woman suffrage everywhere in the United States by means of amending the federal Constitution, thus removing the matter entirely beyond the competence of the respective states. Previous to this time attention had been directed chiefly upon individual states. Arizona in 1912 was the last new state to come into the Union with full woman suffrage, and New York in 1917 was the last state to amend her constitution in order to provide full suffrage for women. This last accomplishment was considered a tremendous victory for the suffragists, as may well be supposed. However, all gains in the respective states would be completely overshadowed in a nation-wide campaign for the passage of a federal amendment.

One of the most interesting halfway steps which the women were able to make occurred in Illinois in 1913. An act passed by the legislature of that state on June 26, 1913, granted suffrage to women so far as

it lay in their power to do so.[1] The federal Constitution permits state legislatures to fix the qualifications of voters for Presidential electors. Thus women in Illinois were permitted to vote for Presidential electors. On the other hand, congressmen are elected by those who are qualified to vote for members of the most numerous branch of the state legislature. Of course the qualifications for electors of state assemblymen are fixed in the Illinois constitution and cannot be altered by the state legislature. Hence the anomalous situation exists in Illinois of women voting for Presidential electors and yet not voting for congressmen and state assemblymen.

The state legislature went as far as it could and much farther than most legal students thought it had a right to go. It undertook to permit women to vote for candidates for offices created by the legislature, assuming that only the offices created by the Constitution itself were included in the constitutional suffrage provision. Thus the offices of governor and assemblyman could not be made the object of woman suffrage because those offices were created by the Constitution, and suffrage provisions were fixed in that instrument. On the other hand, the office of member of state board of equalization, for instance, was created by the legislature, and it felt competent to fix the suffrage provisions with regard to that office. It was a bold step for the legislature to take and quite out of harmony with the opinion of learned writers on constitutional law,[2] but the Supreme Court of Illinois

[1] Laws of Illinois, 1913, p. 333.

[2] Cooley, *Constitutional Limitations*, p. 599: "Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment to the constitution."

upheld the measure in spite of a very able attack which was made upon it in 1914.[1]

But even such an important halfway step as this and the full suffrage attained in many states are chiefly significant for the power they gave the woman-suffrage advocates in striking for a federal amendment. The women now exert a very great political influence, and it is no longer possible to tell whether a public officer expresses his real opinion of woman suffrage when he supports it or whether he is simply frightened into it. The fight is to the death, for the women will not temporize with their opponents but judge the merits of a statesman purely on his attitude toward their cause. Rational and dispassionate discussion of political problems cannot be looked for from this element until its cause is won.

Indications are that the opposition is disintegrating, although a campaign on a federal amendment might stimulate an organized resistance little expected by the suffragists. Men who hope to remain in political life are starting what might become a stampede for cover and espouse the woman's cause with panic-stricken fervor. President Wilson may have been responsible in part when he broke the back of the opposition to the Anthony Amendment in the House on January 9, 1918. The proposed amendment was to come up the following day; there was considerable opposition from Democratic members, and a committee of twelve went to the President for advice on the matter. He advised them to vote for the amendment, and the opposition was broken. When the vote came, on January 10, the

[1] *Scown* v. *Czarnecki*, 264 Ill. 305.

amendment passed by the necessary two-thirds vote, 274 to 136. It then went to the Senate, where it is now pending.[1]

As was stated above, the politicians bid fair to succumb, while the members of a much less active element of the opposition are meeting the situation with philosophic resignation, unconvinced. Their attitude is particularly interesting, being quite uncolored by political considerations or ulterior motives. It is difficult to get expressions of their opinion, for they are seldom given voluntarily and must be sought out. For the most part they are to be found in the literature disseminated by various associations opposed to woman suffrage.

This group is more or less out of sympathy with the whole woman's movement and the demands for equality. It holds that women are demanding something which all the power of man could not grant. It maintains that woman is dependent whether she likes it or not, and all the laws that could be written never would alter the fact. In the plant, animal, and human kingdom alike, in all the fundamental, instinctive family relations, the female is bound in the very nature of things to be dependent. The tyranny of man, the old common law of England, and acts of parliament are not responsible for the fact that the male creature is always the leader, the protector, and the ruler of his kind. An act of Congress, it maintains, will not alter the fact that women instinctively seek and glory in the protection of men, that men will lead, will control and dominate and rule, and that normal women will be content in the masterful domination of their men; that all the laws in Christendom could

[1] June, 1918.

not alter these elemental instincts. It is not cruel legislation that has made the female of the species dependent everywhere, among the flowers of the earth, the beasts of the field, the birds, the savages, and at the family hearth, and no amount of legislation can undo it. All the king's horses and all the king's men are helpless in the face of elemental instincts.

One is likely to get the impression that this group holds the opinion that since this fundamental relationship cannot be altered the granting of woman suffrage would not matter much in any case. But the objectors go on to protest that the granting of woman suffrage involves an attempt to overturn normal relations that is bound to react disastrously upon society. They believe that political institutions should be founded on philosophic bases which contemplate these elemental things; that suffrage and legislation are merely the refined instruments of civilization with which men exert their control; that in their last analysis they are no different from the cave man's club, and that it is stultifying and dangerous to let women play with the club. The exercise of suffrage and the practice of legislation are so orderly and quiet that people forget the element of brute strength lying in the background. Only when the time of stress comes, when lawmaking is useless and conventions are ignored, when the courts retire into the background and society is plunged into war, does the ultimate force back of suffrage and legislation come to the surface. Now it is maintained that political institutions and machinery ought to be fashioned in contemplation of possible times of stress and should not grant to women the exercise of the essentially masculine function.

Some go so far as to say that attempts to do so will result in social demoralization. The masculine type of woman is pictured. An effeminate man is a creature instinctively despised, for he threatens race degeneration. The masculine type of woman may threaten the same; and the exercise of the aggressive function of leadership, control, and domination, even through the orderly machinery of modern government, tends to produce the masculine type of woman. That is the contention of this particular group of objectors. They do not prophesy immediate disaster; they do not even deny that temporary good may come of the experiment; they merely indulge in philosophic speculation. Rome was not built in a day, nor did it fall in a day. The effeminate, sensuous, dissipated men who let the empire decay were the product of generations. There are enough unfeminine women identified with the suffrage movement today[1] to suggest the possibility of race degeneration if the type multiplies.

But such speculations have as yet played a very small part in the controversy. They are presented here chiefly because they seem to be the stronghold of the irreconcilables. The business man, the politician, the active man generally, is more than likely to accept woman suffrage, if it comes, with a good grace, whether he likes it or not. Opposition, if there should be any at all in the event of a federal amendment being passed, would chiefly be found among certain sociologists and political philosophers. Their theories would no doubt be the basis of a reaction, should it ever come.

[1] Unfeminine according to present standards.

Agitation for a federal amendment, alien suffrage in certain states, ununiform literacy tests, strange laws in the South, and semisuffrage for women in the various states lend weight to arguments in favor of making suffrage a matter for federal regulation exclusively. If the federal Constitution would confer suffrage and guarantee it, then the matter would be entirely beyond the competence of the states, and there would be uniform suffrage throughout the United States. Of course such an amendment to the Constitution would compromise states' rights, but states' rights are rapidly coming to be nothing but a memory anyway. It would be a very long and difficult process to get an amendment through, and its opponents would no doubt be very much more aggressive than those in favor of it, that is, because no particular group of people would feel that they would be directly benefited by the change. It would be justified merely as a step in perfecting our governmental machinery. Woman suffragists are not willing to take it up because it might jeopardize the success of their own cause.

A flurry of indignation arose when the Great War came to the United States and the newspapers hysterically announced that alien enemies could vote for congressmen in several states.[1] A proposed amendment to the federal Constitution was promptly introduced in the Senate, aiming to prevent any but citizens from voting for congressmen and Presidential electors. Nothing came of it, however, and public interest very quickly subsided.

[1] Alabama, Arkansas, Indiana, Kansas, Missouri, Nebraska, Oregon, South Dakota, and Texas.

In all probability an intensely interesting chapter in suffrage history is about to be enacted. Great pressure can be brought to bear upon the Senate to pass the Anthony Amendment, for the function of Congress is merely to submit the question to the states for final approval. Then every effort will be put forth on both sides. The opposition will be defending its last ditch, and heroic efforts can be expected. A defeat for the opposition would mean complete and lasting victory for the women, while victory for the opposition could only mean present-day success in an endless struggle. The Anthony Amendment contains no time limit.[1] It is quite possible that bitter controversy may arise out of the situation, and it may be difficult to get the questions involved fairly before the courts. If thirty-five states ratified the amendment in a comparatively short time, and it seemed impossible to get another, how long should the measure lie before the country in that status? Suppose that all forty-eight states cast decisive votes and thirteen were negative? Would that dispose of this particular amendment? Suppose that during a period of many years, in which the suffragists were striving to convert a last remaining necessary state, some state which had already cast a favorable vote should become overwhelmingly opposed. Could that state change its

[1] Congress attempted to put a seven-year time limit in the so-called Dry Amendment. That is, if three-fourths of the states (36) have not ratified the proposed amendment at the end of seven years, it is intended that the measure shall be considered lost, and any new efforts must start at the beginning as if nothing had been done at all. Whether Congress had the constitutional right to fix a time limit or not is an open question which may yet trouble the Supreme Court not a little. The Anthony Amendment contains no time limit, and the presumption is that, once passed by Congress, it may lie before the states indefinitely.

vote? The presumption is that it could not, but a state finding itself in that predicament is not likely to let the matter pass without precipitating a legal struggle. These are all very practical problems, and unless the suffragists should win over three-fourths of the states in a comparatively short time constitutional lawyers might be able to tie up the measure for years.

Those states which already have full woman suffrage,[1] and a few others in the halfway stage, can no doubt be relied upon to pass an amendment in a short time. Other things in favor of the suffragists are: natural enthusiasm for a change hailed as democratic; a large, well-organized, and tireless body of workers; a considerable number of political leaders; and a large portion of the public press. To the advantage of the opposition are to be found inertia and conservatism, clumsy and awkward political machinery involved in a constitutional change, legitimate constitutional issues, legal red tape, time, a possible reaction from reform propaganda, and finally a more or less quiet but substantial opposition to be found in nearly every section of the country. The struggle will certainly be interesting, and it may be exceedingly long.

[1] Arizona, California, Colorado, Idaho, Kansas, Montana, New York, Nevada, Oregon, Utah, Washington, and Wyoming.

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